JAHIT RAHMAT & ANOR v. NG KIM CHOOI & ORS

HIGH COURT MALAYA, SHAH ALAM
FAIZAH JAMALUDIN J
[CIVIL SUIT NO: BA-23NCVC-22-06-2020]
28 NOVEMBER 2023

Abstract – *(i) In exceptional circumstances, a beneficiary with a direct stake in safeguarding an estate asset possesses the locus standi to initiate legal action for its protection and preservation. The need for such beneficiary to acquire administrative authority, through 'letters of administration', would only become relevant if he/she seeks to claim inheritance; (ii) The Land Administrator and/or the land office, as the body entrusted under the National Land Code to process and approve an application for the partition of land, must have a process in place that requires its officers to seek the clarification of the person who submits the application to explain when there are discrepancies in the signatures on the forms supporting such application.*

CIVIL PROCEDURE: *Locus standi – Land law – Action for wrongful and illegal partition of land – Allegation of fraud and forgery as partition done without owners' knowledge – Action commenced by beneficiary of estate – Whether beneficiary had power to act on behalf of deceased owner as estate still unadministered – Whether letters of administration required – Whether there were special circumstances for beneficiary to act to preserve and protect asset of estate – Whether beneficiary entitled to commence action*

LAND LAW: *Partition – Wrongful and illegal partition – Fraud and forgery – Land surveyor applied to Land Administrator to partition land – Land Administrator approved application and issued two separate titles – Allegation that partition of land was done without owners' knowledge – Whether there was fraud and forgery in application for partition – Whether application for partition of land null and void – Whether registration of names on titles of partitioned portions null and void – National Land Code, ss. 22, 140, 141 & 141A*

TORT: *Negligence – Duty of care – Wrongful and illegal partition of land – Land surveyor submitted copies of pre-computation plan to city council for approval for purposes of application for partition of land – City council approved plan and registered it as partition plan – Land surveyor applied to Land Administrator to partition original land – Land Administrator approved application and issued two separate titles – Allegation of fraud and forgery as partition done without owners' knowledge – Whether land surveyor failed, refused and/or negligent in discharging responsibility and duty of care – Whether city council failed, refused and/or negligent in discharging responsibility and duty of care – Whether Land Administrator failed, refused and/or negligent in discharging responsibility and duty of care*

The plaintiffs claimed against the defendants for wrongful and illegal partition by the District Land Administrator ('fourth defendant') of a land ('original land') into two portions of land held under separate titles, namely the first and second partitioned lands. The plaintiffs' case was that (i) the first plaintiff, one Nabiba ('deceased') and six others ('other co-owners') were the co-proprietors of the original land. The first plaintiff, the deceased and their extended families had lived in houses built on the original land since 1965. After the deceased passed away, her son ('second plaintiff') became the legal heir. MHS Survey Consultant ('MHS') had submitted 17 copies of pre-computation plan ('impugned plan') to Majlis Perbandaran Klang ('third defendant') for approval for purposes of an application under ss. 140 to 144 of the National Land Code ('NLC') for the partition of the original land. The third defendant approved the plan, registered it as a partition plan and returned 12 copies of the impugned plan to the second defendant. The second defendant applied to the fourth defendant to partition the original land and submitted (i) 12 copies of the impugned plan which were purportedly signed by the first plaintiff and the deceased; (ii) three copies of Borang 9B *ie*, permohonan untuk memecahkan bahagian tanah purportedly signed by the first plaintiff and the deceased; and (iii) copies of the identity cards of the first plaintiff, the deceased and the other co-owners. The fourth defendant approved the application and stated that two separate titles would be issued. The first plaintiff discovered the sale of the land when he and his family asked one of the co-owners to borrow the issue document of title of the original land. That was also when he discovered that the other co-owners had sold their shares of the land to the first defendant. The plaintiffs and their family members went to see the first defendant. The first defendant informed them that the original land had been portioned into the first and second partitioned portions and the second partitioned portion was located next to the main road while the first partitioned portion was located behind the second partitioned portion. According to the first plaintiff, the position of the land on the land title had been moved to the back without his knowledge and he suspected that unscrupulous individuals had changed the position of the land for their interest. In the present action, the plaintiffs sought (i) a declaration that the partitioned portions of the original land were null and void; (ii) injunctions restraining the eviction of the plaintiffs and their extended families from the second partitioned portion; and (iii) orders that the fourth defendant cancel the titles for the first and second partitioned portions and for the fourth defendant to re-issue a new title for the second partitioned portion, where the position of the plaintiffs' and their extended families' homes on the second partitioned portion, remain the same as they were on the title for the original land prior to the partition. The issues that arose were: (i) whether the second plaintiff had the power to act on behalf of the deceased in this action. The first, second and fourth defendants contended that the second plaintiff did not have the *locus standi* to act on behalf of the deceased's estate because it was still unadministered – no letters

of administration or grant of probate had been issued in respect of the estate; (ii) whether there was fraud and forgery in the application for the partition of the original land; (iii) whether the application for the partition of the original land was null and void; (iv) whether the first and/or second defendants were separately and/or jointly involved in the forgery of the application for the partition; (v) whether the registration of the names on the titles of the first and second partitioned portions were null and void; (vi) whether the second defendant failed, refused and/or was negligent in discharging his responsibility and duty of care as a licensed land surveyor; (vii) whether the third defendant failed and/or was negligent in discharging its responsibility and duty of care in providing the pre-computation plan for the application for the partition; and (viii) whether the fourth defendant failed, refused and/or was negligent in discharging its responsibility and duty of care as the land administrator in the application for the partition and/or the registration of the first and second partitioned portions.

Held (allowing action):

(1) The second plaintiff was the natural-born son and the legal heir of the deceased. He was a beneficiary of the estate of the deceased and had equity in the said estate. The question of the second plaintiff taking out letters of administration would only arise when the second plaintiff and the other beneficiaries of the deceased claim their share in the estate. In this action, the second plaintiff was seeking a declaratory order that the partition of the original land to the first and second partitioned portions were null and void and injunctions to preserve and protect the houses situated on the lands from being demolished and from him and his family from being evicted from the lands. He was not claiming a share in the estate of the deceased in this action. Where there exist special circumstances for a beneficiary of an estate to act to preserve and protect the asset of an estate, the beneficiary is entitled to commence legal action against the defendant *qua* beneficiary for the purpose of protecting and preserving the asset of the estate. In this case, such special circumstances existed and it was not necessary for a beneficiary *ie*, the second plaintiff, to take out letters of administration to preserve and protect the deceased's estate. Therefore, the second plaintiff had the *locus standi* to commence this action on behalf of the estate for the limited purpose of protecting and preserving the asset of the deceased's estate and to seek declaratory orders and injunctions against the defendants. (paras 35, 40, 41, 42, 44 & 45)

(2) The second defendant failed to prove that he was appointed by the first plaintiff and the deceased (who had died more than six years before the date of the application) to make the application to partition the original land. Further, the second defendant failed to discharge his burden of proof that the purported signatures on the impugned plan and the Borang 9B were made by the first plaintiff and the deceased. Therefore, the

signatures of the first plaintiff and the deceased on the impugned plan and Borang 9B were forged. Accordingly, there was fraud and forgery in the application for the partition of the original land into the first and second partitioned portions. (paras 61 & 69-71)

(3) Section 141(1)(a) of the NLC states that no partition shall be approved by the State Director or the Land Administrator unless each of the co-proprietors have either joined in or consented to making the application for its approval. Notwithstanding the provisions in ss. 140 and 141, s. 141A of the NLC states that any co-proprietor can make the application for approval to partition a land, where the other co-proprietors do not join or consent in the making of the application. The first and second defendants, however, did not call any of the other co-owners as witnesses during the trial. Without the testimony of any of the other co-owners, both the first and second defendants failed to prove their case that the other co-owners had consented to the making of the application for the partition of the original land. They also did not produce any evidence to discharge their evidential burden that the second defendant was instructed by at least one of the other co-owners to apply for the partition. The application for the partition of the original land did not comply with either ss. 140 or 141A of the NLC. The application was accordingly null and void. (paras 74, 75, 79 & 82)

(4) The first defendant was grossly negligent in failing to make any inquiries as to the title of the original land and the co-proprietors of the said land. The first defendant, as the purchaser of the land, was under an obligation to investigate properly all matters relating to the sale of land, including the title of the land and the actual proprietors of the land. By his own admission, the first defendant did not do so. By failing to conduct the necessary investigation, the first defendant clearly disregarded his obligation to make enquiries as to the title and closed his eyes as to whether the co-proprietors of the original land had agreed or consented to the partition of the said land and whether the second defendant had made the application to partition the land on the instructions of any of the co-proprietors. The first and second defendants were separately and/or jointly involved in and/or privy to the fraud and forgery of the application for the partition of the original land. (paras 99 & 110)

(5) As both the partitions and the titles for the first and second partitioned portions were obtained through fraud and forgery, they were null and void at law. It followed, therefore, that the transfer and registration of the new co-proprietors on the title of the first partitioned portion and the name of the first defendant on the title of the second partitioned portion was also null and void. (para 113)

(6) Under s. 5 of the NLC, a pre-computation plan must show the intended new boundaries and areas of the lots based on computation from existing survey data or other relevant data. However, in the instant case, the impugned plan submitted to the third and fourth defendants was not prepared based on the computation from existing survey data or any other relevant data. Additionally, the second defendant, in breach of sub-reg. 29(1)(h) of the Licensed Land Surveyors Regulations 2011 ('2011 Regulations'), had affixed his signature on the impugned plan even though he had not prepared the plan and the plan was not prepared under his supervision. Nonetheless, the second defendant had represented to the third defendant that the impugned plan was a 'pre-computation plan' and had requested the third defendant to approve the plan. In doing so, the second defendant was dishonest and/or fraudulent in discharging his professional duties and was in breach of the code of professional conduct in sub-regs. 29(1)(a), (e) and (h) of the 2011 Regulations. The second defendant was also dishonest and/or fraudulent when he informed the fourth defendant that the impugned plan was a 'pre-computation plan' and that he was appointed by the owners of the original land to submit the application for the subdivision and partition of the original land. The second defendant had breached his statutory duties and duty of care as a licensed land surveyor. (paras 122-124, 127 & 130)

(7) The plaintiffs' pleadings did not disclose a cause of action for negligence against the third defendant – they did not plead the particulars of the third defendant's negligence. Parties were bound by their pleadings, and they were not allowed to adduce facts and issues which they had not pleaded. Therefore, a finding of negligence could not be made against the third defendant for approving the impugned plan as a pre-computation plan since it was not pleaded by the plaintiffs against the third defendant. (paras 131, 132 & 134)

(8) The fourth defendant had not acted in good faith in the manner in which it had processed the application for the subdivision and the partition of the original land and its action for partitioning the original land, in breach of the provisions of the NLC. The fourth defendant's Penolong Pegawai Daerah (Pembangunan Tanah), DW4, had failed to exercise due diligence and care in the manner she carried out her responsibility in processing the application for the partition of the original land, which resulted in the plaintiffs and their extended families being in danger of having their houses on the said land demolished and them being evicted from the said land – the land on which they and their families had lived on for nearly 60 years since 1965. The fourth defendant could not avail itself of the protection accorded under s. 22 of the NLC. The fourth defendant had breached the NLC and was negligent in discharging its responsibility and duty of care to the plaintiffs in approving the application for the partition of the original land. (paras 184-186)

(9) Having considered the plaintiffs' pain and suffering, hardship and mental distress caused by the loss of their property (the original land) and the danger of having their houses located on the second partitioned portion demolished because of the first, second and fourth defendants' actions, the sum of RM200,000 was a fair and reasonable sum of general damages in the circumstances, payable to the plaintiffs by the first, second and fourth defendants jointly and severally. Further, exemplary damages in the sum of RM1,000,000 was awarded against the fourth defendant to signify the court's disapproval, condemnation and denunciation of the fourth defendant's lackadaisical and arbitrary manner in which it had discharged its statutory duties under the NLC and for its contumelious disregard of the plaintiffs' rights. Judgment was given to the plaintiffs and the following orders were made, *inter alia*, (i) an injunction restraining the first, second and third defendants from demolishing the plaintiffs' houses and the houses of their extended families located on the second partitioned portion and built prior to the issuance of the title of the second partitioned portion; (ii) an injunction restraining the first, second and third defendants from evicting the plaintiffs and their families from the second partitioned portion; and (iii) the fourth defendant was ordered to cancel the title for the first and second partitioned portions and to issue a 'geran baharu hak milik' sambungan for the original land with the record of the ownership that was the same as the title deed to the original land. (paras 7, 193, 216 & 218)

Case(s) referred to:

Al Rashidy Kassim & Ors v. Rosman Roslan [2007] 3 CLJ 361 FC ***(refd)***

Aseambankers Malaysia Bhd & Ors v. Shencourt Sdn Bhd & Anor [2014] 2 CLJ 773 CA ***(refd)***

Au Meng Nam & Anor v. Ung Yak Chew & Ors [2007] 4 CLJ 526 CA ***(refd)***

Benjamin William Hawkes v. PP [2020] 8 CLJ 267 FC ***(refd)***

Boonsoom Boonyanit v. Adorna Properties Sdn Bhd [1997] 3 CLJ 17 CA ***(refd)***

Cheong Seok Leng v. PP [1988] 1 LNS 39 ***(refd)***

Dato' Dr Zambry Abd Kadir v. Dato' Seri Ir Hj Mohammad Nizar Jamaluddin; Attorney General Of Malaysia (Intervener) [2009] 5 CLJ 265 CA ***(refd)***

Dato' Mokhtar Hashim & Anor v. PP [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 FC ***(refd)***

Hartalega Sdn Bhd & Anor v. Kerajaan Negeri Selangor & Ors [2022] 7 CLJ 735 HC ***(refd)***

International Times & Ors v. Leong Ho Yuen [1980] 1 LNS 31 FC ***(refd)***

Junaidi Berimang v. PP & Another Appeal [2022] 1 LNS 522 CA ***(refd)***

Kreditbank Cassel G.M.B.H. v. Schenkers Ltd. [1927] 1 KB 826 ***(refd)***

Laksmana Realty Sdn Bhd v. Goh Eng Hwa [2005] 4 CLJ 871 CA ***(refd)***

Leelawathy Ratnam & Ors v. Pengarah Tanah Dan Galian Negeri Selangor & Anor [2010] 1 LNS 1185 HC ***(dist)***

Oliver v. Hinton [1899] 2 Ch 264 ***(refd)***

Omar Ali Mohd & Ors v. Syed Jajaralsadeq Abdulkadir Alhadad & Ors [1995] 3 SLR 388 ***(refd)***

Ooi Jim & Anor v. Ai Eit & Ors [1974] 1 LNS 108 FC ***(refd)***

Pendaftar Hakmilik, Pejabat Tanah Dan Galian Negeri Selangor v. Bank Pertanian Malaysia Bhd [2016] 3 CLJ 851 CA ***(refd)***
Pendaftar Hakmilik Negeri Selangor v. Caesius Development Sdn Bhd & Ors And Another Appeal [2020] 3 CLJ 327 CA ***(refd)***
Rookes v. Barnard (No 1) [1964] AC 1129 ***(refd)***
Ruben And Ladenburg v. Great Fingall Consolidated And Others [1906] AC 439 ***(refd)***
Sambaga Valli KR Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal [2017] 1 LNS 500 CA ***(refd)***
Samuel Naik Siang Ting v. Public Bank Bhd [2015] 8 CLJ 944 FC ***(refd)***
Sinnaiyah & Sons Sdn Bhd v. Damai Setia Sdn Bhd [2015] 7 CLJ 584 FC ***(refd)***
State (Delhi Administration) v. Pali Ram [1979] AIR 14 ***(refd)***
Supreme Tribute Sdn Bhd v. Dato' Mohd Amin Ahmad Yahya & Ors [2018] 1 LNS 1006 CA ***(dist)***
Tan Keng Yong & Anor v. Tan Hwa Ling & Ors [2022] 3 CLJ 274 CA ***(refd)***
Tenaga Nasional Bhd v. Evergrowth Aquaculture Sdn Bhd & Other Appeals [2021] 9 CLJ 179 FC ***(refd)***
The Government Of Malaysia & Anor v. Aminah Ahmad [2023] 8 CLJ 1 FC ***(refd)***
Wong Moy (Administratrix Of The Estate Of Theng Chee Khim, (Deceased) v. Soo Ah Choy [1996] 3 SLR 398 ***(refd)***
Yap Ham Seow v. Fatimawati Ismail & Ors And Another Appeal [2013] 9 CLJ 577 CA ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 45, 47, 67, 73, 101, 103, 106, 114(g)
Federal Constitution, art. 13(1)
Licensed Land Surveyors Regulations 2011, regs. 29(1)(a), (e), (h), 31(b)
National Land Code, ss. 5, 22, 140(1), 141(1)(a), 141A, 142, 143, 143A, 144, 145, 340(2)(a), (b), (3), 346(1), 378, 379
National Registration Regulations 1990, regs. 2, 5(2), First Schedule
Town and Country Planning Act 1976, s. 5

Other source(s) referred to:
Augustine Paul, *Evidence: Practice and Procedure*, 4th edn, LexisNexis, p 667

For the plaintiffs - Hazizah Kassim, Fatimah Azzahrah Rumaizi; M/s Hazizah & Co
For the 1st & 2nd defendants - Norasidi Nadziruddin & Imran Kamaruddin; M/s Jailani Zubir & Partners
For the 3rd defendant - Heidi Saw Ching Ying; M/s Fernandez & Selvarajah
For the 4th defendant - Husna Abdul Halim; State Legal Advisor, Negeri Selangor

Reported by Lina E

JUDGMENT

Faizah Jamaludin J:

Introduction

[1] This is an action by the plaintiffs against the defendants for, what they claim, was the wrongful and illegal partition by the Pentadbir Tanah Daerah Klang ("D4") of the land held under title Geran Mukim 6048, Lot 2558, Mukim Kapar, 5th Mile Sungei Binjai Road, Daerah Klang, Selangor (the "original land") into two portions held under the following separate titles:

A (i) Suratan Hakmilik HS(M) 39940, PT 66484, Mukim Kapar, 5th Mile Sungei Binjai Road, Daerah Klang, Selangor (the "first partitioned portion"); and

(ii) Suratan Hakmilik HS(M) 39941, PT 66485, Mukim Kapar, 5th Mile, Sungei Binjai Road, Daerah Klang, Selangor (the "second partitioned B portion").

[2] The plaintiffs' case is that the application for the partition of the original land was made fraudulently and that the signatures of the first plaintiff ("P1") and Nabiba bt Amam ("the deceased") on the documents relating to the application, including the pre-computation plan and the C Borang 9B, were forged. It is an undisputed fact that the deceased had passed away in 2003 – six years before the application for the partition was made by D2 to D4.

[3] The plaintiffs sought a declaration that the partition of the original D land into the first partitioned portion and the second partitioned portion are null and void. They also sought for injunctions restraining the eviction of the plaintiffs and their extended families from the second partitioned portion and the demolition of their homes located on the said second partitioned portion. Additionally, they sought for orders that D4 cancel the titles for the first E partitioned portion and the second partitioned portion, and for D4 to reissue a new title for the said second partitioned portion, where the position of the plaintiffs' and their extended families' homes on the second partitioned portion remains the same as they were on the title for the original land prior to the partition.

F **[4]** After full trial, this court made findings of fact based on the evidence produced that there were both fraud and forgery in the application for the partition of the original land, and that the first defendant ("D1") and the second defendant ("D2") were jointly and/or severally involved in the fraud and forgery of the documents in respect of the application for the partition G of the original land.

[5] This court also found that D2 and D4 were negligent in discharging their respective responsibilities, duties of care and statutory duties in respect of the application for the partition of the original land and the issuance of the separate titles for the first partitioned portion and the second partitioned H portion.

[6] This court further found that D4, as the District Land Administrator who has jurisdiction over lands situated in the district of Klang, had caused injury to the plaintiffs by reason of its lackadaisical and arbitrary approach in discharging its statutory duties under the National Land Code ("NLC"), I in the manner that it had processed and approved the application for the partition of the original land, and in issuing the separate titles for the first partitioned portion and the second partitioned portion. This court found that D4 had acted with contumelious disregard for the plaintiffs' rights.

[7] For this reason, this court awarded exemplary damages in the sum of RM1,000,000 against D4 to signify this court's disapproval, condemnation, and denunciation of D4's lackadaisical and arbitrary manner in which it had discharged its statutory duties under the NLC and for its contumelious disregard of the plaintiffs' rights.

[8] The full reasons for my decision are set out in this judgment.

Material Facts

[9] The first plaintiff, Jahit bin Rahmat ("P1"), Nabiba binti Amam ("the deceased") and Mohd Mokhtar bin Zakarsi, Mohd Mosly bin Zakarsi, Nasrudin bin Zakarsi, Rihanah binti Zakarsi, Saada binti Zakarsi and Zohdi bin Haji Abdul Manan (the "other co-owners") were the co-proprietors of the original land in the portions listed next to their respective names in the table below.

Jahit bin Rahmat	"P1"	1/6
Nabiba binti Amam	"The deceased"	1/12
Mohd Mokhtar bin Zakarsi	"The Other Co-Owners"	1/10
Mohd Mosly bin Zakarsi		1/10
Nasrudin bin Zakarsi		1/10
Rihanah binti Zakarsi		1/10
Saada binti Zakarsi		1/10
Zohdi bin Haji Abdul Manan		1/4

[10] P1, the deceased and their extended families have lived in houses built on the original land since 1965.

[11] The second plaintiff, Yusli bin Ismail ("P2"), is the natural-born son and the legal heir of the deceased. The deceased had passed away on 14 June 2003.

[12] The second defendant, Mohammad bin Sidin ("D2"), is a licensed land surveyor trading under the name and style of MHS Survey Consultant (Registration No: 002105460-H) ("MHS").

[13] The third defendant, Majlis Perbandaran Klang ("D3"), is the city council under the Local Government Act 1976 (Act 171) ("LGA 1976"). It is the local authority for the area where the original land is situated under LGA 1976. It is also the local planning authority for the said area pursuant to s. 5 of the Town and Country Planning Act 1976 (Act 172) ("TCPA 1976").

[14] D4 is the District Land Administrator with jurisdiction over the district of Klang where the original land is situated. It is empowered under the NLC to approve applications to partition by proprietors of alienated land.

[15] On 17 September 2009, MHS submitted 17 copies of pre-computation plan (pelan prahitungan) (Ruj: MHS/GMS/0965-PH(01)) dated 25 October 2009 ("the impugned plan)(exh. "P1") to D3 for approval for purposes of an application under ss. 140 to 144 of the NLC for the partition of the original land into two separate portions to be held under separate titles.

[16] D3 approved the impugned plan and registered it as a partition plan (pelan pecah bahagian) Majlis Bil. MPK/KU/PBHG/26/2009. It returned 12 copies of the impugned plan to D2 under the cover of its letter dated 30 October 2009.

[17] On 12 February 2010, D2 applied to D4 to partition the original land. Under the cover of its letter dated 12 February 2010 (exh. "P2"), D2 submitted, among others:

(i) 12 copies of the impugned plan – purportedly signed by P1 and the deceased;

(ii) three copies of Borang 9B dated 10 March 2010 – permohonan untuk memecahkan bahagian tanah purportedly signed by P1 and the deceased; and

(iii) copies of P1, the deceased and the other owners' identity cards ("NRICs").

[18] D2's letter to D4 is reproduced below.

Rujukan Kami: MHS/GMS/0965(2)
Rujukan Tuan:
Tarikh: 12 Februari 2010

Tuan Pentadbir Tanah Daerah Klang,
Pejabat Tanah/Daerah Klang,
41902 Klang

Tuan,

Permohonan Untuk Memecahkan Bahagian Tanah Dibawah Seksyen 140 Hingga 144, KTN, Bagi Hakmilik GM6048 Lot 2558, Mukim Kapar, Daerah Klang, Selangor Darul Ehsan Untuk Menjadi Dua Hakmilik Berasingan

Perkara di atas adalah dengan hormatnya dirujuk.

Kami telah dilantik oleh tuan tanah iaitu En Jahit Bin Rahmat & Rakan-rakan untuk mengemukakan permohonan seperti yang tersebut di atas untuk pertimbangan dan kelulusan pihak tuan. Untuk menyempurnakan tujuan tersebut disertakan bersama ini dokumen-dokumen berikut:

1. 12 salinan Pelan Pra hitungan ruj: MHS/GMS/0965-PH(01)

2. 3 Salinan Borang 9B

3. Wang Tunai sebanyak RM100.00 sebagai bayaran pendaftaran

4. Satu Salinan Sijil Carian Rasmi bagi Hakmilik GM 6048

5. Satu salinan penyata Cukai Tanah 2010

6. Satu salinan Hakmilik GM 6048

7. 8 salinan Kad Pengenalan Pemilik Tanah

8. Surat Kelulusan daripada Majlis Perbandaran Klang (MPK)

Kami berharap dokumen seperti yang terlampir di dalam keadaan teratur dan pohon kelulusan dari pihak tuan.

Sekian, Terima kasih.

Yang benar,

MHS Survey Consultant

tt

Hi Jaafar Idris

sk: Jahit bin Rahmat
No. 76, batu 53/4 Jalan Meru
41050 Klang, Selangor

[19] On 14 April 2010, D4 approved the application to partition the original land. In a letter dated 15 April 2010 signed by Sazatul Faeza binti Alias ("DW4"), who at the material time was the Penolong Pegawai Daerah (Pembangunan Tanah), DW4 stated that D4 had approved the application for the partition of the original land and that two separate titles will be issued ("approval letter").

[20] D4's approval letter was addressed to P1 at the address stated in D2's application letter, which is not P1's address. D4's records show that the approval letter was not delivered to P1. Instead, it was given to D2's representative, Hj Jaafar bin Idris, on 20 April 2010.

[21] Under the cover of a letter dated 10 June 2010 signed by Mohammad Ghazali bin Abu ("DW2") (exh. "P7"), D2 wrote to D4 asking for new PT Nos for the partitioned portions of the original land to enable it to prepare the sketch plan (pelan lakar).

[22] On 8 December 2010 to D4, a law firm Messrs Salva & Co, informed D4 that it had authorised its representative, Mohd Janurudin bin Talib, to collect the issue document of title for the first partitioned portion and the second partitioned portion. D4 delivered the issue document of title to Messrs. Salva & Co's representative, even though the law firm did not state in its letter who it was representing and why it had the right to the said issue document of title.

[23] P1 said that he discovered the sale of the land in 2019 when he and his family asked Mohd Mokhtar bin Zakarsi to borrow the issue document of title of the original land. He discovered that the other co-owners of the original land had sold their share of the land to D1. P1's sister, Ramlah binti Rahmat, then went to D4's office to seek confirmation as to where the issue document of title for the original land is located. She was informed by D4 that the other co-owners had sold their share in the land to D1.

[24] On 2 March 2019, P1, P2 and their family members went to see D1. They were informed by D1 that the original land had been partitioned into the first partitioned portion and the second partitioned portion. And that the second partitioned portion was located next to the main road, and the first partitioned portion was located behind the second partitioned portion. The contemporaneous minutes of the meeting are reproduced below:

Haribulan:	2.3.2019 (Sabtu)
Masa:	Lebih kurang 11.00 pagi hingga 12.00 tengahari
Tempat:	Ban Hooi Tayar S/B Batu 1, Jalan Kapar 41400 Klang. Tel: 03-3342314 H/P: 016-2627258
Hadir:	En. Ng Kim Chooi (Pembeli) Jahit bin Rahmat (Penama di Grant) Yusli bin Ismail (Anak) (Nabiba binti Amam - deceased) Nor Izar bin Rahmat Supaat bin Sharif Zaidah bt Rahmat Rugayah bt Romlah bt Rahmat
Perkara:	Berkenalan dengan Pembeli sebahagian Tanah Lot 2558 dari pemilik lama dan meminjam Grant Asal untuk Penukaran nama Hakmilik
Setibanya kami di bilik Mr. Ng Kim Chooi, kami memperkenalkan diri dan mengatakan bahawa kami adalah penghuni tapak sebahagian hadapan Lot 2558 yang mana kami dapat tahu Mr. Ng sudah beli sebelah tapak yang kami duduki sekarang. Tujuan kami berjumpa Mr. Ng adalah hendak meminjam grant asal untuk menukar nama Hakmilik sekarang (Jahit & Nabiba (simati) kepada salah sa-orang dari adik beradik kami memandangkan Jahit sudah berpindah rumah lain dan Nabiba sudah meninggal dunia. Mr. Ng setuju untuk meminjamkan grant tersebut. Apabila Mr. Ng menghulurkan kepada kami, alangkah terkejutnya, kami dapati kedudukan tanah kami berpindah ke bahagian belakang lot 2558. Mr. Ng menerangkan kepada kami bahawa grant lama telah dipecahkan kepada dua grant, satu atas nama Jahit, Nabiba & Ng Kim Chooi dan yang satu lagi atas nama Ng Kim Chooi sahaja.	

Kami menyatakan kepada Mr. Ng bahawa perbuatan pemindahan kedudukan tanah kami tidak kami ketahui hingga hari itu.

Mr. Ng juga menyatakan bahawa pemindahan itu pun ia tidak tahu, lebih lanjut boleh rujuk pada peguamnya, Puan Kamalia. Akhirnya tiada penyelesaian perbincangan kami dan Mr. Ng meminjamkan grant asal tersebut ditandatangani oleh Ramlah bt Rahmat untuk tindakan selanjutnya.

Mr. Ng beri beberapa cadangan untuk kami berpindah, **kami tidak setuju** (*eg,* Duduk sementara dalam masa 4/5 tahun baru pindah ke bahagian belakang lot 2558 atau Mr Ng beli tanah bahagian kami atau ganti dengan tanahnya yang lain kepunyaan Mr. Ng) memandangkan Mr. Ng sudah banyak keluar duit atas pembelian tanah tersebut.

[25] On 11 March 2019, P1 and P2 wrote to D3 asking for confirmation whether there was an application to partition the original land and a copy of the partition plan.

[26] On 25 March 2019, D3 replied to P1 and P2's letter informing them there was an application for the partition of the original land on 17 February 2009. It referred to D4's Letter Bil. PDTK/T/PT/800-5/1/6/2010 (11) dated 15 April 2010 and asked the plaintiffs to check the matter with D4.

[27] Upon receipt of D3's confirmation, P1 on 27 March 2019 filed a police report (No. Repot: Bandar Baru Klang/003804/19) stating that ¾ of his land had been moved to the back and that he suspected that the title of the land had been amended without his approval as the registered landowner.

[28] On 28 March 2019, P1 wrote to D4 stating that the position of land on the land title had been moved to the back without his knowledge and that he suspected that unscrupulous individuals had changed the position of the land for their interest. He informed D4 that he had filed a police report on the matter and asked D4 to check how the position of the land had been moved to the back.

[29] On 8 April 2019, P1 and P2 filed a report to the Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) that they suspected that the application for partition and change of name of the original land did not comply with established procedures, where there had been a breach of trust and use of forged documents.

[30] On 10 April 2019, D4 replied to P1's letter of 28 March 2019. It informed P1 that upon reviewing the application for the partition of the original land, D4 found the application received was complete and complied with regulations as stipulated in the checklist (senarai semak) and the application letter from MHS dated 12 February 2010. It went on to state that

A accordingly, pursuant to ss. 140 to 142 of the NLC, the District Land Administrator had considered and approved the application for the partition of the land dated 14 April 2010. D4's letter to P1 is reproduced below:

Ruj. Kami: PDTK/PT/800-5/1/6/2010 (17)
Tarikh: 10 April 2019

B

Encik Jahit bin Rahmat
d/a Lot 2558, Batu 5 ¾, Jalan Meru
41050 Klang
Selangor

Tuan,

C

Mohon Semak Semula Ke Atas Pecah Bahagian Yang Telah Di Ubah Ke Belakang

Dengan hormatnya saya diarah merujuk surat tuan bertarikh 28 Mac 2019 berhubung perkara di atas.

D 2. Adalah dimaklumkan, setelah semakan di buat berhubung dengan perkara di atas, pentadbiran ini mendapati permohonan yang diterima adalah lengkap dan telah mematuhi peraturan-peraturan seperti yang ditetapkan dalam senarai semak dan surat permohonan daripada Jurukur, Tetuan MHS Consultant bertarikh 12 Februari 2010.

E 3. Selaras dengan peruntukan di bawah Seksyen 140-142 Kanun Tanah Negara, Pentadbir Tanah Daerah telah menimbang dan meluluskan permohonan pecah bahagian tanah bertarikh 14 April 2010.

Sekian, harap maklum. Terima kasih.

Saya yang menjalankan amanah,

F

t.t.

(Ahmad Fitri Bin Ahmad)
Penolong Pegawai Daerah (Pembangunan Tanah)
b.p. Pegawai Daerah Klang

G **[31]** On 14 May 2019, the plaintiffs wrote to D3 asking for confirmation of the partition of the original land. They requested from D3 for copies of the pre-computation plan, MHS' letter of application and D3's approval letter to MHS and D4's approval letter of 14 October 2010. D3 received the letter on 24 May 2019.

H **[32]** On 4 June 2019, D3 forwarded a copy of the pre-computation plan to P2.

[33] On 9 July 2019, P1 and P2 filed separate police reports, where they reported to the police that P1's and the deceased's signatures were forged on the application form for the partition of the original land. They then filed this

I writ action against the defendants in June 2020.

The Issues

[34] The issues for the court's determination are:

(i) whether the P2 has the power to act on behalf of the deceased in this action;

(ii) whether there was fraud and forgery in the application for the partition of the original land into the first partitioned portion and the second partitioned portion;

(iii) whether the application for the partition of the original land was null and void at law because of the fraud and forgery in the application;

(iv) whether D1 and/or D2 separately and/or jointly were involved in the forgery of the application for the partition;

(v) whether the registration of the names of P1, the deceased and D1 on the title of the first partitioned portion, and D1 on the title of the second partitioned portion are null and void at law;

(vi) whether D2 failed, refused and/or was negligent in discharging his responsibility and duty of care as a licensed land surveyor under Lembaga Jurukur Tanah Malaysia;

(vii) whether D3 failed and/or negligent in discharging its responsibility and duty of care in providing the pre-computation plan (pelan pra-hitungan) for the application for the partition; and

(viii) whether D4 failed, refused and/or was negligent in discharging its responsibility and duty of care as Land Administrator in the application for the partition and/or the registration of the first partitioned portion and the second partitioned portion?

Issue (i): Does P2 Have The Power To Act On Behalf Of The Deceased's Estate In This Action?

[35] P2 is the natural-born son and the legal heir of the deceased. D1, D2 and D4 contend that P2 does not have *locus standi* to act on behalf of the deceased's estate because it is still unadministered – no letters of administration or grant of probate have been issued in respect to the estate.

[36] In *Ooi Jim & Anor v. Ai Eit & Ors* [1974] 1 LNS 108; [1977] 2 MLJ 105 ("*Ooi Jim*"), the Federal Court held that the question of taking out letters of administration would only arise when it became necessary for the beneficiary to claim her share in the estate of the intestate. It held that it was not necessary for the first appellant, in that case, to take out letters of administration to bring the action, as it was primarily an action for a declaration as to the status of her husband.

[37] The Federal Court in *Al Rashidy Kassim & Ors v. Rosman Roslan* [2007] 3 CLJ 361; [2007] 4 MLJ 297; [2007] 3 AMR 341 ("*Al Rashidy*") had to decide on the following question of law:

> (1) whether the beneficiaries of the deceased person without first obtaining the Letters of Administration have a *locus standi* to commence an action to protect and to regain the land which has been fraudulently obtained by an outsider?

[38] Following its earlier decision in *Ooi Jim*, the Federal Court in *Al-Rashidy* held that the beneficiaries of a deceased person, without first obtaining a letter of administration of the deceased's estate, do have *locus standi* to commence an action to protect and regain the estate's land that had been fraudulently obtained by an outsider. It held that the beneficiaries of a deceased person have *locus standi* to protect and preserve the assets of the deceased's estate even though they have yet to obtain the grant of a letter of administration of the deceased's estate. The court cited with approval the Singapore case of *Omar Ali Mohd & Ors v. Syed Jajaralsadeq Abdulkadir Alhadad & Ors* [1995] 3 SLR 388, where the Singapore High Court held that the plaintiffs were suing in their own capacity as beneficiaries of the estate for a declaration to protect the property of the estate, which they had *locus standi* to do as they had at least equity in the estate of the intestate. It also cited with approval the decision of the Singapore Court of Appeal in *Wong Moy (Administratrix Of The Estate Of Theng Chee Khim, (Deceased) v. Soo Ah Choy* [1996] 3 SLR 398, where the court held, *inter alia*, that (i) a beneficiary of an estate which was unadministered may institute an action to recover the assets of the estate where special circumstances could be shown to exist, and (ii) special circumstances were not confined solely to cases where the personal representative had defaulted in acting to recover the property; that all circumstances of the case should be considered.

[39] Arifin Zakaria FCJ (as he then was) in delivering the Federal Court's judgment in *Al-Rashidy* held:

> [18] We agree with the view expressed by the Singapore Court of Appeal in that the special circumstances should not be confined solely to cases where the personal representative had defaulted in recovering the property of the estate.
>
> *We are of the view that all the circumstances of the case ought to be considered by the court in arriving at a just result*. Secondly, following *Re Atkinson* and *Omar Ali bin Mohd*, *we think the beneficiary has at least an equity in the estate of the deceased to entitle the beneficiary to seek on behalf of the estate the remedy of a declaratory judgment*.
>
> [20] Thus, the appellants have had to act fast in order to protect and preserve the estate of the deceased. Therefore, on the facts of this case, *we find, there exist special circumstances for the beneficiaries to commence legal action against the respondent qua beneficiaries for the purpose of protecting and preserving the asset of the estate*. Quite apart from that *we also hold that the beneficiaries in the present case have at least an equity in the estate of the deceased to entitle them*

to seek a declaratory judgment. Thus, on the above grounds are agree with the learned counsel for the appellants that *the appellants in this case had the locus standi to commence this action at least for the limited purpose of protecting and preserving the asset of the estate*.

(emphasis added)

Findings On Issue (i)

[40] In this instant case, P2 is a beneficiary of the deceased's estate and has equity in the estate.

[41] Following the Federal Court's decision in *Ooi Jim*, the question of P2 taking out letters of administration would only arise when P2 and the other beneficiaries of the deceased claim their share in the estate. P2, in this action, is seeking a declaratory order that the partition of the original land to the first partitioned portion and second partitioned portion is null and void, and injunctions to preserve and protect the houses situated on the lands from being demolished, and from him and his family from being evicted from the lands. He is not claiming a share in the deceased's estate in this action.

[42] The Federal Court in *Al Rashidy* held that where there exist special circumstances for a beneficiary of an estate to act to preserve and protect the asset of an estate, the beneficiary is entitled to commence legal action against the respondent *qua* beneficiary for the purpose of protecting and preserving the asset of the estate.

[43] It is evident from the facts of this case that P2 had to act in filing this action against the defendants to protect and preserve the estate of the deceased and to restrain D1 and/or D3 from demolishing the deceased's home and that of her extended family on the second partitioned portion.

[44] Accordingly, for these reasons, I find that there exist special circumstances for P2 as a beneficiary of the deceased's estate to bring this action against the defendants *qua* beneficiary for the purpose of protecting and preserving the assets of the estate. As held by the Federal Court in *Al Rashidy*, it is not necessary for a beneficiary to take out letters of administration to preserve and protect a deceased's estate.

[45] Therefore, I find that P2 has *locus standi* to commence this action on behalf of the estate for the limited purpose of protecting and preserving the asset of the deceased's estate and to seek declaratory orders and injunctions against the defendants.

Issue (ii): Whether There Was Fraud And Forgery In The Application For The Partition Of The Original Land Into The First Partitioned Portion And The Second Partitioned Portion?

[46] The instruments which are in dispute in respect of the partition of the original land into the first partitioned portion and the second partitioned portion are (i) the impugned plan; and (ii) the Borang 9B.

[47] D2's application letter to D4 for the partition of the original land was purportedly copied to P1. However, as the evidence shows, the address in the "sk" on the letter was not P1's. During the trial, P1 confirmed that the address on D2's application letter was not his and that he had never received a copy of the said letter.

[48] Both the impugned plan and the Borang 9B were purportedly signed by P1 and the deceased. P1 denied that he had appointed D2 to apply for the partition of the original land. He also denied signing either the impugned plan or the Borang 9B.

[49] The plaintiffs' case is that as the deceased had died on 14 June 2003, it would have been impossible for the deceased to have appointed D2 to apply to partition the original land, or for her to have signed the impugned plan on 25 October 2009 and the Borang 9B on 10 March 2010.

[50] It is D1 and D2's case that D2 was appointed to make the application for the partition of the original land into the first partitioned portion and the second partitioned portion; and that the impugned plan and the Borang 9B were signed by P1, the deceased and the other co-owners of the original land. In his written submission, learned counsel for D1 and D2 submitted:

> 5. Defendan Kedua berhujah bahawa selaku perunding jurukur tanah yang **telah dilantik untuk membuat permohonan pecah bahagian bagi Hartanah Terdahulu kepada Hartanah Pertama dan Hartanah Kedua** telah menyempurnakan proses pecah bahagian tersebut dengan baik dan teratur.
>
> 6. Defendan Kedua juga berhujah bahawa setiap proses yang dilakukan oleh Defendan Kedua adalah di dalam pengetahuan dan persetujuan pemilik-pemilik berdaftar Hartanah Terdahulu berdasarkan **pelan P1 dan Borang 9B yang telah ditandatangani oleh kesemua pemilik-pemilik berdaftar Hartanah Terdahulu**. (emphasis added)

[51] The standard of proof for fraud in civil actions is on a balance of probabilities. The Federal Court in *Sinnaiyah & Sons Sdn Bhd v. Damai Setia Sdn Bhd* [2015] 7 CLJ 584; [2015] 5 MLJ 1; [2015] 5 AMR 497 held that there are only two standards of proof, namely (i) beyond a reasonable doubt in criminal cases, and (ii) on a balance of probabilities in civil cases. It held that the standard of proof of fraud in a civil case is on a balance of probabilities.

[52] The plaintiffs desire that this court give judgment to them and declare that the partition of the original land into the first partitioned portion and the second partitioned portion is null and void because of the fraud and forgery in the application for the partition. Thus, pursuant to s. 101 of the Evidence Act 1950 ("EA"), the legal burden of proof is on the plaintiffs to establish their case that there was fraud and forgery in the application for the partition of the original land.

[53] Nonetheless, the legal burden of proof (the burden of establishing a case) should not be confused with the evidential burden of proof (the burden of introducing evidence). The Federal Court in *International Times & Ors v. Leong Ho Yuen* [1980] 1 LNS 31; [1980] 2 MLJ 86, explained the distinction between the legal burden of proof and evidential burden of proof, per Salleh Abas FCJ (as he then was) as follows:

> For the purpose of this appeal it is necessary to bear in mind the distinction between the two senses in which the expressions burden of proof and onus of proof are used (*Nanji & Co v. Jatashankar Dossa & Ors* AIR 1961 SC 1474 1478 and *Raghavamma v. Chenchamma* AIR 1964 SC 136 143). *The first sense, signified by the expression burden of proof such as referred to in s. 101 of the Evidence Act is the burden of establishing a case and this rests throughout the trial on the party who asserts the affirmative of the issue. ... The second sense referred to as onus of proof*, on the other hand, *relates to the responsibility of adducing evidence in order to discharge the burden of proof. The onus as opposed to burden is not stable and constantly shifts during the trial from one side to the other according to the scale of evidence and other preponderates*. Such shifting is one continuous process in the evaluation of evidence. *According to s. 102 and 103 of the Evidence Act, if the party with whom this onus lies whether initially or subsequently as a result of its shifting does not give any or further evidence or gives evidence which is not sufficient, such party must fail*. It is this onus that we are concerned with in the present appeal. (emphasis added)

[54] The Federal Court held that whilst the legal burden of proof lies with the party seeking judgment throughout the trial, the evidential burden of proof shifts from one side to the other during the trial.

[55] Section 103 of the EA states that the burden of proof of a particular fact lies with the person who wishes the court to believe in its existence. Section 103 reads:

> **103. Burden of proof as to particular fact**
>
> The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
>
> ILLUSTRATIONS
>
> (a) A prosecutes B for theft and wishes the court to believe that B admitted the theft to C. A must prove the admission.
>
> (b) B wishes the court to believe that at the time in question he was elsewhere. He must prove it.

[56] Pursuant to s. 106 of the EA, the burden of proving a fact within the knowledge of a person, is with that person. Section 106 reads:

106. Burden of Proving fact especially within knowledge

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

ILLUSTRATIONS

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

[57] D2 wishes this court to believe that D2 was appointed by the registered owners of the original land, including P1 and the deceased, to apply for the partition of the original land into the first partitioned portion and the second partitioned portion. He also wishes this court to believe that P1 and the deceased had signed the impugned plan and the Borang 9B.

[58] Accordingly, pursuant to ss. 103 and 106 of the EA, the burden of proof is on D2 to prove on a balance of probabilities that:

(i) D2 was appointed by P1 and the deceased to make the application for the partition of the original land; and

(ii) P1 and the deceased had signed the impugned plan and the Borang 9B.

This is because both these particular facts are within D2's knowledge.

(i) Did D2 Prove That He Was Appointed By P1 And The Deceased To Make The Application For The Partition?

[59] D1 and D2 plead in para. 14 of their statement of defence that D2 was appointed by the registered owners of the original land to make the application for the partition of the land into the first partitioned portion and the second partitioned portion. Paragraph 14 of the defence is reproduced below:

14 … Defendan Kedua menyatakan bahawa Defendan Kedua telah dilantik oleh pemilik-pemilik berdaftar asal bagi Hakmilik terdahulu untuk membuat permohonan pecah bahagian tanah kepada Hartanah Pertama dan Hartanah Kedua.

[60] Encik Mohammad Ghazali bin Abu, a manager at MHS Survey Consultant ("DW2"), was called as a witness by the defendants at the trial. Under cross-examination, DW2 admitted that D2 was not appointed by the registered owners of the original land to make the application for the subdivision and partition. DW2 said that D2 was instructed to make the application by an unknown Malay man whose name DW2 claims he cannot remember. Additionally, DW2 confirmed that the Malay man who instructed him was not P1. DW2's testimony on this issue is reproduced below:

Plaintiffs' Counsel:	Boleh En. Ghazali beritahu kepada Mahkamah siapa yang mengarahkan Defendan ke-2 untuk P1 ini, Pelan Tapak ini disediakan? Siapa yang beri arahan?
DW2:	*Saya ... tentang arahan ini saya tak ingat daripada saya tapi seorang Melayu. Saya dihubungi melalui telefon dan first appointment saya di Pejabat Tanah.*
Plaintiffs' Counsel:	Sekali lagi? Tak jelas, tak dengar.
DW2:	Saya tak dapat menjelaskan ini particular siapa yang ... cuma saya boleh ingat masa itu saya buka fail ini atas nama Jahit. Tapi ..
Judge:	Encik apa?
DW2:	Jahit. Yang ada nama penama ni. Sebab urusan tanah ini selalunya ....
Plaintiffs' Counsel:	Sekejap. Sekejap. Encik kata Encik dapat arahan melalui telefon oleh seorang lelaki Melayu?
DW2:	Ya, betul.
Plaintiffs' Counsel:	Lelaki Melayu itu bukan Jahit?
DW2:	Bukan Jahit tapi saya tak boleh ingat siapa.
Plaintiffs' Counsel:	Tak ingat siapa tetapi Encik letakkan nama orang itu yang memohon ini untuk pecah bahagian seorang .... Encik letakkan nama Jahit. Betul?
DW2:	Betul. Saya namakan kes ini, kes yang saya ambil sebagai Jahit.
Plaintiffs' Counsel:	Apa?
DW2:	Fail saya, saya namakan sebagai Jahit.
Plaintiffs' Counsel:	Okay. Saya katakan En. Jahit tidak pernah melantik Defendan Ke-2 untuk membuat pecah bahagian pada geran asal ini, Lot 2558. Setuju dengan saya.
DW2:	Ulang balik?
Plaintiffs' Counsel:	Encik kata Encik letak nama fail ini fail Jahait
DW2:	Mmm.
Plaintiffs' Counsel:	*Saya kata En. Jahit tidak pernah melantik Defendan ke-2 ini atau Mohamad bin Sidin atau pun Encik ke untuk buat pelan pecah bahagian ini, tanah Lot 2558 ini. Dia tidak pernah lantik. Setuju dengan saya?*
DW2:	Setuju.

(emphasis added)

[61] By reason of DW2's admission that D2 was not appointed by P1 to make the application for the partition and the fact that the deceased had died more than six years before the date of the application, I find that D2 had failed to prove that he was appointed by P1 and the deceased to make the application to partition the original land.

(ii) Did D2 Prove That The Impugned Plan And The Borang 9B Were Signed By P1 And The Deceased?

[62] How is a signature on a document proved? Section 67 of the EA states that if a document is alleged to be signed by a person, the signature of that person must be proved. Section 67 reads:

> **67. Proof of signature and handwriting of person alleged to have signed or written document produced**
>
> If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting shall be proved to be in his handwriting.

[63] Pursuant to ss. 103 and 106 of the EA, D2 must prove that the signatures on the impugned plan and Borang 9B were those of P1, the deceased and the other co-owners.

[64] Augustine Paul FCJ in *Evidence: Practice and Procedure* (4th Edn, LexisNexis) at p. 667, citing Sarkaria J's judgment in *State (Delhi Administration) v. Pali Ram* [1979] AIR 14, stated that similar to the Indian Evidence Act and English Law, our EA recognises two direct methods of proving a person's signature or handwriting, which are:

(i) the admission of the person who wrote the signature or writing; or

(ii) the evidence of a witness who saw the person sign or write the document.

[65] His Lordship went on to state that a person's signature or handwriting may also be proved by:

(i) by the evidence of a handwriting expert: s. 45 of the EA;

(ii) by the evidence of a witness acquainted with the handwriting of the person with the handwriting of the person by whom it is supposed to have been written or signed: s. 47 of the EA;

(iii) opinion formed by the court on the comparison made by itself: s. 73 of the EA; and

(iv) by circumstantial evidence: per Abdoolcader FJ in *Dato' Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101; [1983] 2 MLJ 232.

[66] In this instant case, did D2 prove P1's and the deceased's signatures on the impugned plan and the Borang 9B? Going through all the six methods of proving a person's signature as stated by Augustine Paul FCJ, I find that the answer is in the negative. My reasons for this finding are as follows:

(i) D2 did not obtain the admission of P1 or the deceased that they had signed both the impugned plan and the Borang B. P1 did not admit that he had signed both documents. And D2 could not procure an admission from the deceased since she had died more than six years prior to the date of her purported signatures on both documents;

(ii) D2 did not adduce any evidence of a witness who saw P1 or the deceased signing either document;

(iii) D2 did not adduce the evidence of a handwriting expert that the signatures on the impugned plan and the Borang 9B are P1's and the deceased's;

(a) the handwriting expert, Encik Muhammad Rafiuddin bin Jailani, who is a document examiner with the Jabatan Kimia Malaysia ("PW3") examined P1's purported signature on the impugned plan by comparing it against P1's specimen signatures;

(b) in his report dated 18 October 2019, PW3 concluded that upon comparing P1's specimen signatures, P1's purported signature on the impugned plan was most probably not written by P1;

(c) learned counsel for D4, during her cross-examination of PW3, suggested to him that there is a probability that the signature on the impugned plan could be P1's. Although PW3 agreed with the suggestion, he said that the probability that the signature on the impugned plan was P1's was less than 50%;

(iv) D2 did not adduce any evidence of any witness who is acquainted with P1 and the deceased's signatures;

(v) this court did not form an opinion on a comparison of P1's and the deceased's signatures on the impugned plan and the Borang 9B, with any other signatures of theirs; and

(vi) D2 did not adduce any circumstantial evidence to prove that the signatures on the impugned plan and the Borang 9B were P1's and the deceased's.

[67] Moreover, DW2 affirmatively stated under cross-examination that he had never met with any of the registered owners of original land and that he did not witness any of the signatures on the impugned plan. He said that he had, instead, given the impugned plan to the same Malay man whose name he cannot remember to procure the signatures of the co-owners of the original land. He also confirmed that the Malay man to whom he gave the impugned plan was not P1.

[68] DW2 further confirmed that he did not know when the purported signatures were made on the impugned plan, or that the deceased had died. DW2's testimony on this issue is reproduced below:

Plaintiffs' Counsel:	Siapa yang dapatkan tandatangan 8 orang ini?
DW2:	Apabila persetujuan untuk plot A, plot B ...
Plaintiffs' Counsel:	Tak. Soalan saya senang saja. Siapa yang dapatkan tandatangan? Sebab tadi En. Ghazali setuju dengan saya ada 8 tandatangan.
DW2:	Betul, saya serah ...
Judge:	*Soalan saya, siapa yang dapatkan tandatangan ini?*
DW2:	*Saya serahkan kepada orang yang sama, orang yang pertama saya jumpa itu.*
Plaintiffs' Counsel:	*Kepada siapa*?
DW2:	*Orang yang saya berjumpa kali pertama untuk kes ini?*
Plaintiffs' Counsel:	*"Orang yang saya jumpa kali pertama". Dan orang kali pertama itu bukan En. Jahit. Setuju dengan saya?*
DW2:	*Setuju*
Plaintiffs' Counsel:	Setuju?
DW2:	Setuju.
Plaintiffs' Counsel:	Encik tahu bilakah tandatangan ini diturunkan oleh kelapan-lapan orang ini?
DW2:	Ada jangka masa tapi saya tak tahu berapa lama?
Plaintiffs' Counsel:	Tidak tahu?
DW2:	Tidak tahu.
Plaintiffs' Counsel:	*Boleh saya katakan Encik tidak menyaksikan tandatangan ini dibuat?*
DW2:	*Setuju.*
Plaintiffs' Counsel:	*Encik tengok nombor 3 itu, Nabiba Bt Amam, 1/12 bahagian. Encik tahu Nabiba Amam ini telah meninggal dunia?*
DW2:	*Tidak tahu.*

(emphasis added)

Findings On Issue (ii)

[69] For these reasons, I find that D2 had failed to discharge his burden of proof that the purported signatures on the impugned plan and the Borang 9B were made by P1 and the deceased.

[70] I am satisfied that based on the facts of this instant case, P1's and the deceased's signatures on the impugned plan and the Borang 9B were forged.

[71] Accordingly, I find that there was fraud and forgery in the application for the partition of the original land into the first partitioned portion and the second partitioned portion.

Issue (iii): Whether The Application For The Partition Of The Original Land Was Null And Void At Law Because Of The Fraud And Forgery In The Application?

[72] The partition of alienated lands is governed by Chapter 2 of Part Nine, ss. 140 to 145 of the NLC.

[73] Pursuant to s. 140(1) of the NLC, any alienated land held by co-proprietors may be partitioned by (i) the agreement between the co-proprietors and (ii) the approval of the State Director (for land held under registry title) or the Land Administrator (for land held land office title). Section 140(1) reads:

> **140. Powers of co-proprietors to partition with approval of State Director or Land Administrator**
>
> (1) Any alienated land which is held under Registry or Land Office title by two or more persons as co-proprietors may, by agreement between those persons and with the approval under this Chapter of the State Director or Land Administrator, as provided by sub-s. (2), be partitioned:
>
> (a) so as to vest in each of them, under a separate title, a portion of the land of an area proportionate as nearly as may be to his undivided share in the whole; or
>
> (b) where two or more of them are to continue as co-proprietors, so as to vest:
>
> (i) in the remaining co-proprietor or, as the case may be, each of such co-proprietors, under a separate title, a portion of the land of an area proportionate as nearly as may be to his undivided share in the whole; and
>
> (ii) in the continuing co-proprietors the remainder of the land under a separate title.

[74] Section 141(1)(a) states that no partition shall be approved by the State Director or the Land Administrator unless each of the co-proprietors has either joined in, or consented to making the application for its approval. Section 141(1)(a) reads:

> **141. Conditions for approval of partition**
>
> (1) No partition shall be approved by the State Director or, as the case may be, Land Administrator unless:
>
> (a) each of the co-proprietors has either joined in, or consented to the making of, the application for its approval;

[75] Notwithstanding the provisions in ss. 140 and 141, s. 141A of the NLC states that any co-proprietor can make the application for approval to partition a land, where the other co-proprietors do not join in or consent in the making of the application. Section 141A reads:

> **141A. Application for partition by any co-proprietors**
>
> Notwithstanding the provisions of sections 140 and 141, any co-proprietors neither join in nor consent to the making of the application may apply for approval to the land.

[76] Learned counsel for D1 and D2 submits that the process for the partition of the original land was in order and valid because s. 141A of the NLC allows the other co-proprietors of the original land to apply for the partition of the land.

[77] With regards to the partition of the original land, pursuant to ss. 103 and 106 of the EA, the evidential burden is on D1 and D2 to prove that any of the co-proprietors of the original land (defined above as "the other co-owners") had consented to the application for the partition of the said land.

[78] Similarly, as D1 and D2 are relying on s. 141A of the NLC that the other co-owners had consented to the application for the partition of the original land, the evidential burden is on D1 and D2: see *Au Meng Nam & Anor v. Ung Yak Chew & Ors* [2007] 4 CLJ 526; [2007] 5 MLJ 136; [2007] 4 AMR 546 ("*Au Meng Nam*"). The Court of Appeal in *Au Meng Nam* held that as the first defendant, in that case, relied on the proviso in s. 340(3) of the NLC that he was a *bona fide* purchaser for value, the evidential burden was on him.

[79] D1 and D2 did not call any of the other co-owners as witnesses during the trial. Without the testimony of any of the other co-owners, both D1 and D2 failed to prove that their case that the other co-owners had consented to the making of the application for the partition of the original land. They also did not produce any evidence to discharge their evidential burden that D2

was instructed by at least one of the other co-owners to apply for the partition. DW2's evidence was that he was instructed through the telephone by a Malay man whose name he claims he cannot remember. DW2 did not say that the Malay man was one of the other co-owners. It follows, therefore, that D1 and D2 failed to prove that any of the other co-owners had instructed D2 to apply for the partition of the land.

[80] Furthermore, as discussed in issue (iv) below, D1's evidence is that he did not meet any of the co-owners of the original land prior to the partition of the original land: see D1's testimony reproduced in para. [93] below. He only dealt with a broker. Like DW2, D1 testified that the broker was a Malay man whose name he cannot remember. D1 said that he only met with the sellers of the land after the partition of the original land, when he was going to cross out (potong) the details of the original land and replace it with the details of the first partitioned portion on the Borang 14A.

Findings On Issue (iii)

[81] For the reasons above, both D1 and D2 failed to prove that D2 was appointed by P1 and the deceased, or by any other of the other co-owners of the original land for the application for the partition of the land. They also failed to prove that any of the other co-owners of the original land had made and/or agreed to D2 making the application of the partition of the title of the original land.

[82] Accordingly, this court finds that the application for the partition of the original land did not comply with either s. 140 or s. 141A of the NLC. The application for the partition is accordingly null and void for this reason.

[83] Additionally, this court has found for the reasons stated in issue (ii) above that there was forgery of the impugned plan and the Borang 9B. In *Boonsoom Boonyanit v. Adorna Properties Sdn Bhd* [1997] 3 CLJ 17; [1997] 2 MLJ 62; [1997] 2 AMR 1813, the Court of Appeal, per Gopal Sri Ram JCA (as he then was) held:

> Third, **it is axiomatic that a forged instrument is null and void and of no effect**. (See, *Kreditbank Cassel G.M.B.H. v. Schenkers Ltd.* [1927] 1 KB 826, at p. 834, per Bankes LJ). It is not merely voidable.
>
> (emphasis added)

[84] The English Court of Appeal in *Kreditbank Cassel GMBH v. Schenkers Ltd* [1927] 1 KB 826, held that because the bills of exchange, in that case, were forgeries, applying *Ruben And Ladenburg v. Great Fingall Consolidated And Others* [1906] AC 439, the plaintiffs could not, in any event, invoke the principle that they were not bound to inquire into the indoor management of the defendant company. It cited the decision of the House of Lords in *Ruben v. Great Fingall Consolidated*, where Lord Loreburn LC said as follows in relation to forged documents:

> I cannot see upon what principle your Lordships can hold that the defendants are liable in this action. **The forged certificate is a pure nullity**. It is quite true that persons dealing with limited liability companies are not bound to inquire into their indoor management, and will not be affected by irregularities of which they had no notice. **But this doctrine, which is well established, applies only to irregularities that otherwise might affect a genuine transaction. It cannot apply to a forgery**.
>
> (emphasis added)

[85] Accordingly, as the impugned plan and the Borang 9B were forged documents, based on the decision of the Court of Appeal in *Boonsom Boonyanit v Adorna Properties Sdn Bhd*; and the English cases of *Ruben v. Great Fingall Consolidated and Kreditbank Cassel G.M.B.H. v. Schenkers Ltd*, this court finds that the application for the partition of the original land was null and void.

Issue (iv): Whether D1 And/Or D2 Separately And/Or Jointly Were Involved In The Fraud And Forgery Of The Application For The Partition?

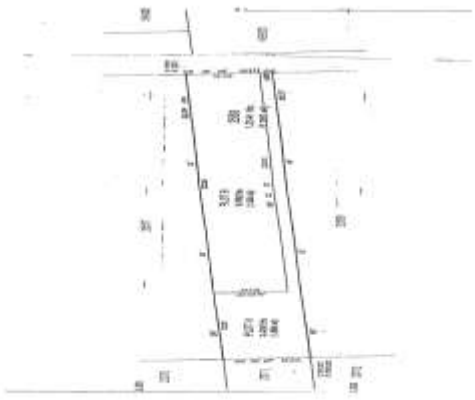
D1

[86] The evidence shows that D1, when he wanted to buy the land, knew that the first partitioned portion and the second partitioned portion were originally one piece of land – the original land – held under one title. D1's testimony on this issue is reproduced below:

Plaintiffs' Counsel:	Saya masih lagi dalam S&J4, Yang Arif. Mr. Ng, pada masa Mr. Ng mahu beli itu tanah 2010, Mr. Ng kata 2010, kan?
D1:	Ya.
Plaintiffs' nsel:	**Itu jam, 2 geran belum lagi ada**. Setuju dengan saya?
D1:	**Betul.**
Plaintiffs' Counsel:	**Mesti ada 1 geran sahaja?**
D1:	**1 geran sahaja.**

(emphasis added)

[87] During the trial, D1 was shown the impugned plan (exh. "P1") that was submitted by D2 in the application for the partition of the original land. On the impugned plan, the original land (Lot 2558) was drawn into Plot B (facing the main road) and Plot A (behind Plot B). After the partition was approved by D4, Plot A was held under the title for the first partitioned portion and Plot B was held under the title for the second partitioned portion. Below is the image of the part of the impugned plan showing the main road, Lot 2558 and Plots A and B:



[88] D1's testimony shows that he knew, before the application for the partition was made by D2, the location of Plot A and Plot B of the original land, which were subsequently held after the partition under two separate titles. The excerpt of his testimony is reproduced below:

Plaintiffs' Counsel:	Yang Arif, saya akan merujuk SD1 kepada P1 di dalam m/s 1 bundle C, Yang Arif. Mr. Ng, itu depan ada ini, C. Yang nipis, m/s 1. Mr. Ng tengok m/s 1 ada ini pelan. Depan sekali, paling depan, paling awal. Ya, itu. Betul. Mr. Ng Nampak itu ada Plot A, Plot B dekat itu pelan? Ada Nampak? Boleh tengok ke?
D1:	Boleh.
Plaintiffs' Counsel:	Mr. Ng beli plot mana?
D1:	Ha?
Plaintiffs' Counsel:	**Yang mana satu Mr. Ng sudah beli? Itu tanah Mr. Ng beli Plot B, betul?**
D1:	**Plot B, betul. Itu besar punya.**
Plaintiffs' Counsel:	Mr. Ng beli semua itu Plot B, betul?
D1:	Betul. Betul
Plaintiffs' Counsel:	**Plot A Mr Ng beli, ada bahagian yang Mr. Ng. beli. Tidak semua. Betul?**
D1:	**Betul.**

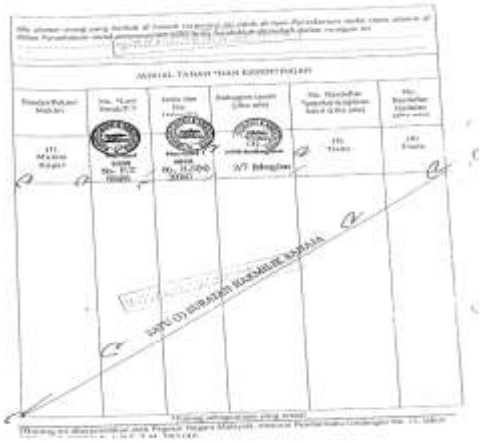
(emphasis added)

[89] D1 said that he did not meet the registered owners of the original land before deciding to buy the land. Instead, he had met with a broker – a Malay man whose name he claims he cannot remember. D1 said that the broker told him that the land was for sale.

[90] Under cross-examination, D1 testified that on the recommendation of his lawyer, he had appointed D2 to make the application for the partition of the original land. He said that he had paid D2's fees in making the application. D1 said he had also paid D3's and D4's fees for the application.

[91] After the partition of the original land, one of the other co-owners of the original land, Mohd Mokhtar bin Zakarsi transferred his portion of the land to D1 for the sum of RM100,000: see the memorandum of transfer (Borang 14A) dated 12 May 2010 (exh. "P11"). And the rest of the other co-owners – Mohd Mosly bin Zakarsi, Nasrudin bin Jarkasi, Rihanah binti Jarkasi, Saada binti Jarkasi and Zohdi bin Haji Abdul Manan – transferred to D1 all the portions of land held under HS(M) 39941, PT 66485, Mukim Kapar (*ie*, the second partitioned portion) for the sum of RM650,000: see memorandum of transfer (Borang 14A) dated 12 May 2010 (exh. "P11").

[92] The jadual tanah dan kepentingan on the Borang 14A (exh. "P11") shows the portion and details of the land transferred by Mohd Mokhtar bin Zakarsi to D1 was 1/10 share in Geran Mukim 6048, Lot 2558, Mukim Kapar (*ie*, the original land). However, the details were crossed out and replaced with a 2/7 portion and that of HSM 39940, PT 66484, Mukim Kapar (*ie*, the first partitioned portion). This can be seen in the image of the second page of exh. "P11" shown below:



[93] D1 said that before he crossed out (potong) the details of the original land on the Borang 14A (exh. "P11") and replaced it with the details of the first partitioned portion, he met all the sellers of the land. He said that he only viewed the land from the main road; and did not view the land together with the sellers. D1 also said that when viewing the land from the main road,

he could see that there were houses on the said land. However, he did not ask the broker or the sellers whose houses were on the said land. The excerpt of his testimony is reproduced below:

Plaintiffs' Counsel:	Mr Ng tengok ada jawapan No. 4 "4.J". Mr. Ng kata: "Pada sekitar tahun 2010 saya telah bersetuju untuk membeli 2/7 bahagian tanah milik Mohd Mokhtar Bin Zakarsi atas hakmilik HSM39940, PT 66484, Mukim Kapar (Hartanah Pertama) dengan harga RM100,000.00 serta kesemua bahagian tanah milik Mohd Mosly Bin Zakasi, Nasrudin Bin Jarkasi, Rihanah Binti Jarkasi, Saada Binti Jarkasi dan Zohdi Bin Hj Abd Manan atas hakmilik HSM 39941, PT 66485, Mukim Kapar (Hartanah Kedua) dengan harga RM650,000." Mr. Ng, saya mahu tanya, ada jumpa penjual tak pada tahun 2010 ini?
D1:	Apa itu?
Plaintiffs' Counsel:	Mr. Ng, setuju jumpa, kan? Tadi ada broker?
D1:	Ya.
Plaintiffs' Counsel:	*Ada jumpa ini semua penjual yang Mr. Ng mahu beli dia punya tanah?*
D1:	*Bila saya mahu potong ... pindah itu ...*
Plaintiffs' Counsel:	Pindah nama?
D1:	Pindah itu 14A, itu ada jumpa.
Plaintiffs' Counsel:	*Mr. Ng, sebelum Mr. potong itu 14A, sign itu 14A, ada pergi ini tanah tak, tengok sama-sama dengan penjual? Ada pergi tengok?*
D1:	*Tak ada*
Plaintiffs' Counsel:	Tak pernah pergi tengok tanah?
D1:	Ada tengok di jalan besar. Tengok saja.
Plaintiffs' Counsel:	Dari jalan besar, tengok saja itu tanah?
D1:	Dia cakap ini tanah nak jual. Itu saja.
Plaintiffs' Counsel:	Itu saja?
D1:	Ya.
Plaintiffs' Counsel:	*Itu jam masa Mr. Ng tengok tanah dari jalan besar, ini kawasan, kawasan depan ini ada rumah sudah, itu tanah ada rumah. Tahu?*
D1:	*Ada Nampak. Depan pun ada. Ada Nampak.*

Plaintiffs' Counsel:	*Mr. Ng ada tanya tak itu penjual ke, itu broker ke, "itu rumah siapa"? Ada tanya?*
D1:	(inaudible 00.42.31)
Plaintiffs' Counsel:	*Tak ada tanya? Jawab Mr. Ng, ada ke tak ada?*
D1:	*Tak ada.* (emphasis added)

[94] D1, as the purchaser of the land, should have conducted the relevant investigation on the land prior to his purchase of the land. The Court of Appeal in *Yap Ham Seow v. Fatimawati Ismail & Ors And Another Appeal* [2013] 9 CLJ 577; [2014] 1 MLJ 645; [2014] 2 AMR 301 ("*Yap Ham Seow*") held that a purchaser is clearly obligated to investigate properly all matters relating to the sale of the land.

[95] The Court of Appeal found the third defendant, who was the purchaser in that case, was a negligent purchaser because he had concluded the sale without any proper investigation into the title or the persons who were the actual proprietors of the land. It held that a negligent purchaser could not be accorded protection of the court because a purchaser in good faith does not include a purchaser who had been negligent or kept his eyes shut. Raus Sharif PCA (as he then was) in delivering the judgment of the Court of Appeal, held:

> [102] Premised on the above, *we are convinced that the third defendant had concluded the sale without any proper investigation into the title or the persons who are the actual proprietors. ... The third defendant in the conveyance of the land was under obligation to investigate properly all matters relating to the sale of the land*. Clearly based on the facts and circumstances of the case the third defendant was negligent in not doing so. *In our considered view a negligent purchaser cannot be accorded the protection of this court because a purchaser in good faith does not include a purchaser who has been negligent or who had kept his eyes shut* (*Au Meng Nam & Anor v. Ung Yak Chew & Ors* [2007] 5 MLJ 136 (*Au Meng Nam*). *This court in Au Meng Nam had held that the purchaser is under the obligation to investigate properly all matters relating to the sale and not just blindly accept what was claimed by the vendor as correct and genuine*. The purchaser in that case clearly disregarded his obligations to investigate the alleged proprietors and the genuineness of the documents. Hence, when a purchaser failed to take ordinary precautions which ought to have been taken in such a matter, he is not entitled to the protection of the court. (emphasis added)

[96] In the Court of Appeal's earlier decision in *Au Meng Nam & Anor v. Ung Yak Chew & Ors* (*supra*), Raus Sharif JCA (as he then was) held:

> [44] ... The first defendant is under the obligation to investigate properly all matters relating to the sale of the said land and not to just blindly accept what was claimed by the 'vendors' as correct and genuine. When he failed to take the ordinary precautions which ought to be taken in such a matter he is not entitled to the protection of the court.

And Gopal Sri Ram JCA (as he then was) said:

> *... To me, the first defendant had acted hastily. He concluded the sale without any proper investigation into the title or the persons claiming to be proprietors*. No doubt he had every right to take advantage of the low price that was offered to him but he took the risk. When he embarked into such risk, it cannot be at the expense of the plaintiffs. This is because while he had a choice, the plaintiffs had none. In fact, the plaintiffs were helpless. The plaintiffs could not do anything to prevent the fraud. Even locking the title in a safe would not had help the plaintiffs. *In such circumstances the court must not favour the first defendant, over the plaintiffs. To do so would be doing injustice to the plaintiffs*.
>
> (emphasis added)

[97] By his own admission, D1 had failed to make any inquiries as to who were the co-owners of the original land and whether they agreed to the land to be partitioned. He also failed to make any enquiries as to existing houses that were on the said land and its owners and occupants. He relied on the broker completely. The Chancery Court of England and Wales in *Oliver v. Hinton* [1899] 2 Ch 264 found that a purchaser to be grossly negligent in failing to make any inquiry as to the title and relied on his agent completely. The court found that although there was no fraud in fact by the purchaser, but the purchaser's failure to make any inquiry as to the title was negligence so gross that it led the court to impute fraud on the purchaser. Linley MR held:

> In the present case there has been no fraud on the part of the defendant; there has only been gross negligence in the ordinary sense of words.
>
> *... negligence so gross as would justify the Court of Chancery in concluding that there had been fraud in an artificial sense of the word – such gross negligence, for instance as omitting to make any inquiry as to the title of the property*. In that sense of the word, I think, there has been in the present case on the part of the defendant *negligence so gross as would have led the Court of Chancery to impute fraud of that kind to her*. I do not mean to suggest that there was any fraud in fact.
>
> (emphasis added)

[98] The principles promulgated in *Oliver v. Hinton* ("the *Oliver v. Hinton* principles") was applied by the Court of Appeal in *Au Meng Nam* and *Yap Ham Seow*. Raus Sharif PCA (as he then was) in *Yap Ham Seow* said:

> [103] The case of *Au Meng Nam* reiterated the governing principles as propounded by Linley MR in *Oliver v. Hinton* [1899] 2 Ch 264. **The Chancery Court in *Oliver v. Hinton* found the purchaser to be grossly negligent in failing to make inquires as to the title and relied on his agent completely**.
>
> (emphasis added)

[99] Based on the facts and circumstances of this instant case, I find that D1 was grossly negligent in failing to make any inquiries as to the title of the original land and the co-proprietors of the said land. As held by the Court

of Appeal in *Yap Ham Seow*, D1 as the purchaser of the land was under an obligation to investigate properly all matters relating to the sale of land, including the title of the land and actual proprietors of the land. D1 by his own admission, did not do so. Paraphrasing the words of Raus Sharif PCA in *Yap Ham Seow*, by failing to conduct the necessary investigation, D1 clearly disregarded his obligation to make enquiries as to the title and closed his eyes as to whether the co-proprietors of the original land had agreed or consented to the partition of the said land, and whether D2 had made the application to partition the land on the instructions of any of the co-proprietors.

[100] D1's gross negligence had resulted in the original land being partitioned without P1 and the deceased's consent and the houses owned by the plaintiffs' and their extended families on the second partitioned portion at risk of being demolished and those occupying the houses at risk of being evicted from the land.

[101] For this reason, pursuant to the *Oliver v. Hinton* principles, I find D1's negligence so gross as to impute fraud on D1.

D2

[102] Under s. 5 of the NLC, a pre-computation plan must be prepared either by the Director of Survey and Mapping or a licensed land surveyor showing the intended new boundaries and areas of the lots based on computation from existing survey data or other relevant data, where the linear misclosure of the computation is not less than one part in four thousand. "Pre-computation plan" is defined in s. 5 of the NLC as:

> a plan of the layout of lots *prepared by Director of Survey and Mapping or licensed land surveyor* showing the intended new boundaries and areas of those lots which are *based on computation from existing survey data and other relevant data, where the linear misclosure of the computation is not less than one part in four thousand*.
>
> (emphasis added)

[103] "Licensed land surveyor" is defined in s. 5 of the NLC as a surveyor licensed to practise under the Licensed Land Surveyors Act 1958 (the "1958 Act"). D2 is a licensed land surveyor - he is licensed to practice under the 1958 Act.

[104] DW2 is employed as a pembantu juruukur at D2's firm, MHS. Under cross-examination, DW2 confirmed that he is not a licensed land surveyor: he is not licensed to practice under the 1958 Act.

[105] DW2 also confirmed that the impugned plan was not prepared by D2. He testified that the impugned plan was prepared by a person named Liza, who is a "pelukis plan" employed at MHS and that DW2 had reviewed the impugned plan prior to submission to D3.

[106] Additionally, DW2 confirmed that neither he nor Liza went to the site of the original land, nor did they measure the said land in preparing the impugned plan. He said that the plan was prepared based on what the Malay man whose name he cannot remember, told him. It was not prepared based on computation from existing survey data and other relevant data as required under s. 5 of the NLC. Accordingly, the impugned plan did not fall within the definition of a "pre-computation plan" under the NLC.

[107] Despite the impugned plan not being a pre-computation plan, D2's firm MHS in its letter of 17 September 2009 to D3 stated that it was a pre-computation plan and submitted 17 copies of the plan for D3's approval.

[108] MHS had also stated in its application letter of 12 February 2010 to D4 that it was appointed by landowner "En Jahit bin Rahmat & rakan-rakan" to subdivide the original land. From DW2's testimony, we know this statement was not true – DW2 under cross-examination, confirmed that P1 did not appoint D2 or MHS. DW2 also confirmed that he did not witness P1 and the other co-owners signing the impugned plan, and that he was not aware that the deceased was dead at the time she had purportedly signed the impugned plan.

[109] Accordingly, based on these facts, I find that D2 was in fact involved in the fraud and forgery of the application for the partition of the original land.

Findings On Issue (iv)

[110] For all the reasons above, I find that D1 and D2 were separately and/or jointly involved in and/or privy to the fraud and forgery of the application for the partition of the original land into the first partitioned portion and the second partitioned portion.

Issue (v): Whether The Registration Of The Names Of P1, The Deceased And D1 On The Title Of The First Partitioned Portion, And D1 On The Title Of The Second Partitioned Portion Is Null And Void At Law?

[111] This court had found for the reasons discussed in issue (iii) above that the application for the partition of the original land into the first partitioned portion and the second partitioned portion was null and void.

[112] Additionally, this court had found for the reasons discussed in issue (iv) above that D1 and D2 were separately and/or jointly involved in and/or privy to the fraud and forgery of the application for the partition of the original land.

[113] As both the partition and the titles for the first partitioned portion and the second partitioned portion were obtained through fraud and forgery, they are null and void at law. It follows, therefore, that the transfer and registration of the new co-proprietors on the title of the first partitioned portion and the name of D1 on the title of the second partitioned portion, was also null and void.

A **Findings On Issue (v)**

[114] The partition of the original land and the issuance by D4 of the titles for the first partitioned portion and the second partitioned portion were null and void because of the forged documents. Accordingly, I find that the registration of the names of P1, the deceased and D1 on the title of the first
B partitioned portion, and D1 on the title of the second partitioned portion are null and void at law.

[115] Section 340(2) of the NLC states that the title or interest of a person of any land is not indefeasible in the following situations:

C (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or
D body in the purported exercise of any power or authority conferred by any written law.

[116] This court has found that both D1 and D2 were party and/or privy to the fraud and forgery relating to the application for the partition of the original land. The titles to the first partitioned portion and the second
E partitioned portion were obtained by means of fraud and forged instruments.

[117] It follows, therefore, that the registration of the P1, the deceased and D1's names on the first partitioned portion and the second partitioned portion are defeasible pursuant to s. 340(2)(a) and (b) of the NLC and should, accordingly, be set aside.
F

Issue (vi): Whether D2 Failed, Refused And/Or Was Negligent In Discharging His Responsibility And Duty Of Care As A Licensed Land Surveyor Under Lembaga Jurukur Tanah Malaysia;

[118] D2 is a land surveyor licensed under Licensed Land Surveyors Act
G 1958 (Act 458) ("the 1958 Act"). As a licensed land surveyor, D2 is obliged to comply with the Licensed Land Surveyors Regulations 2011 (the "2011 Regulations"). Sub-regulation 29(1) of the 2011 Regulations sets out the code of professional conduct of licensed land surveyors. It reads:

H **29 Code of professional conduct**

(1) Every licensed land surveyor shall:

(a) comply with the provisions of the National Land Code 1965, the Act, any rules and regulations made thereunder and any other written laws in force related to his professional duties;

I ...

(e) not be dishonest or fraudulent in discharging of his professional duties;

...

(h) not certify, affix or put his signature to drawings or plans which are not prepared by him or under his supervision for the purpose of obtaining approval from any authority;

[119] Pursuant to the 1958 Act, every licensed land surveyor must comply with all the provisions in sub-reg. 29(1) of the 2011 Regulations. Pursuant to reg. 31(b) of the 2011 Regulations, non-compliance with any provision of the code of professional conduct under sub-reg. 29(1) is a professional misconduct.

[120] As discussed in para. [102] above, pursuant to s. 5 of the NLC, a pre-computation plan must be prepared either by the Director of Survey and Mapping or a licensed land surveyor. Under sub-reg. 29(1)(h) of the 2011 Regulations, D2, as a licensed land surveyor, is prohibited to certify, affix or put his signature to drawings or plans that were not prepared by him or under his supervision to obtain approval from the authority.

[121] However, the evidence shows that the impugned plan was not prepared by D2 or under his supervision. The impugned plan was instead prepared by Liza, a "pelukis plan" under the supervision of DW2, who is a "pembantu juruukur" and not a licensed land surveyor.

[122] Under s. 5 of the NLC, a pre-computation plan must show the intended new boundaries and areas of the lots based on computation from existing survey data or other relevant data. However, in this instant case, the impugned plan submitted to D3 and D4 was not prepared based on computation from existing survey data or any other relevant data. Neither DW2 nor Liza had visited the original land prior to drawing the impugned plan: DW2 admitted under cross-examination that he and Liza had not gone to the site of the original land to take measurements of the land. Instead, the plan was prepared based on information provided by the Malay man, whose name DW2 claims he cannot remember. It follows, therefore, that the impugned plan was not a "pre-computation plan" as defined under the NLC.

[123] Additionally, D2, in breach of sub-reg. 29(1)(h) of the 2011 Regulations, had affixed his signature on the impugned plan, even though he had not prepared the plan and the plan was not prepared under his supervision – the facts show that the plan was drawn by Liza and reviewed by DW2.

[124] Nonetheless, D2 had represented to D3 in MHS' letter of 17 September 2009 that the impugned plan was a "pre-computation plan" and had requested D3 to approve the plan. In doing so, D2 was dishonest and/or fraudulent in discharging his professional duties and was in breach of the code of professional conduct in sub-reg. 29(1)(a), (e) and (h) of the 2011 Regulations.

[125] Furthermore, D2 had failed to prove that he was instructed by P1 and any of the other co-proprietors of the original land to submit copies of the impugned plan to D3 and to make the application for the partition of the original land to D4. DW2 had confirmed during the trial that D2 was not appointed by P1.

[126] Accordingly, based on these facts, I find that D2 had failed to comply with the provisions of the NLC in making the application for the partition of the original land. He had also breached the 1958 Act and sub-reg. 29(1)(a), (e) and (h) of the 2011 Regulations.

[127] Further, I find that D2 was also dishonest and/or fraudulent when he informed D4 in his application letter of 12 October 2010 that the impugned plan he had submitted was a "pre-computation plan" and that he was appointed by the owners of the original land "En Jahit bin Rahmat dan rakan-rakan" to submit the application for the subdivision and partition of the original land.

[128] In addition to his statutory duty to comply with the provisions of the NLC, the 1958 Act and the code of professional conduct in the 2011 Regulations, D2, as a licensed land surveyor also owed P1 and the deceased as co-proprietors of the original land, a duty of care to ensure that he did not apply to partition their land without their approval or that of the other co-owners. He also had a duty not to act dishonestly or fraudulently.

[129] By (i) making the application to D3 for the approval of the forged impugned plan; (ii) making the application to D4 for the partition of the original land; (iii) by dishonestly and/or fraudulently representing to the authorities that he acted for "Encik Jahit bin Rahmat dan rakan-rakan"; and (iv) by using forged documents in making the application, D2 had breached his duty of care to P1 and the deceased. The evidence shows that D2's breach of the duty of care, had caused damage to P1 and the deceased's estate – their houses on the land are at risk of being demolished and they are at risk of being evicted from the land on which they and/or members of their family have lived on since 1965.

Findings On Issue (vi)

[130] Accordingly, for these reasons, I find that D2 had breached his statutory duties and duty of care as a licensed land surveyor.

Issue (vii): Whether D3 Had Failed And/Or Was Negligent In Discharging Its Responsibility And Duty Of Care In Providing The Pre-computation Plan (Pelan Prahitungan) For The Application For The Partition?

[131] The plaintiffs' pleadings did not disclose a cause of action for negligence against D3 – they did not plead the particulars of D3's negligence. They also did not plead that D3 was negligent in approving the impugned plan as a "pre-computation plan". In their prayers, the plaintiffs had prayed

against D3 for an injunction restraining D3 from demolishing the houses of the plaintiffs and their extended families. They also sought for an interim injunction pending the disposal of this action to restrain D3 from evicting the plaintiffs from the second partitioned portion.

[132] It is a trite law that parties are bound by their pleadings. The Federal Court in *Samuel Naik Siang Ting v. Public Bank Bhd* [2015] 8 CLJ 944; [2015] 6 MLJ 1; [2018] 3 AMR 259 held that it is a cardinal rule in civil litigation that parties are bound by their pleadings: they are not allowed to adduce facts and issues which they have not pleaded. The Court of Appeal in *Aseambankers Malaysia Bhd & Ors v. Shencourt Sdn Bhd & Anor* [2014] 2 CLJ 773; [2014] 4 MLJ 619; [2014] AMEJ 0069 held that a court is not entitled to decide a suit on a matter that is not pleaded.

[133] Although in this instant case, the plaintiffs had raised the issue of negligence against D3 in the issues to be tried, the fact remains that they did not plead negligence against D3 in their statement of claim. The Court of Appeal in *Tan Keng Yong & Anor v. Tan Hwa Ling & Ors* [2022] 3 CLJ 274; [2022] 2 MLJ 805; [2022] 2 AMR 557 held that parties could not rely on the agreed issues to be tried to establish or prove their case if the matter had not been pleaded.

Findings On Issue (vii)

[134] It follows, therefore, this court cannot make a finding of negligence against D3 for approving the impugned plan as a pre-computation plan since it was not pleaded by the plaintiffs against D3.

Issue (viii): Whether D4 Failed, Refused And/Or Was Negligent In Discharging Its Responsibility And Duty Of Care As Land Administrator In The Application For The Partition And/Or The Registration Of Title Of The First Partitioned Portion And The Second Partitioned Portion?

[135] The plaintiffs' case against D4 is that as the Land Administrator, D4 has the duty to ensure that the partition of the original land and/or the registration of the titles for the first partitioned portion and the second partitioned portion were not in contravention with any written law.

[136] D4's defence is seven-fold. Learned Selangor State Assistant Legal Advisor ("ALA") argued the following in D4's defence:

(i) D4 had acted legally and in order in accordance with the applicable law at the material time in processing the application for the partition of the original land;

(ii) as the original issue document of title for the original land had been delivered to D4 in the application for the partition, D4 had no reason to suspect any suspicious circumstances in the application and had proceeded to process the application;

(iii) the plaintiffs failed to inform D4 of the deceased's death;

(iv) D4 does not have the responsibility to investigate behind the Borang 9B and to ensure that the parties named in the Borang 9B were the correct parties;

(v) the identity card for the deceased was still a valid and could be accepted for the application for the subdivision and partition of the original land pursuant to reg. 2 of the National Registration Regulations 1990 ("NR Regulations 1990");

(vi) D4 is entitled to avail itself to the statutory protection of officers under s. 22 of the NLC; and

(vii) the plaintiffs failed to prove all the elements of the tort of negligence against D4.

[137] D4, in paras. 6(d), (g) and (h) of its statement of defence, pleaded that upon checking and examining the application, in particular the impugned plan and the Borang 9B submitted by D2, it found that:

(i) both the impugned plan and the Borang 9B were signed by all the co-proprietors of the original land, including P1: para. 6(d);

(ii) it was satisfied that all the co-proprietors of the original land including P1, had given their written consent for the said application and that the Borang 9B was an instrument that qualified for registration: para. 6(g); and

(iii) at the material time, D4 did not suspect any suspicious circumstances as regards the documents presented including the impugned plan and the Borang 9B, and in good faith accepted that all the signatures on the impugned plan and the Borang 9B were the signatures of the co-proprietors of the original land.

[138] D4, however, did not plead that it had examined the copies of co-proprietors' identity cards that were submitted by D2 with the application.

[139] D4's witness, Sazatul Faeza binti Alias ("DW4"), was the officer who had processed the application in the partition of the original land in 2010. She held the position of Penolong Pegawai Daerah (Pembangunan Tanah) di Pejabat Daerah/Tanah Klang from 5 February 2007 until 15 March 2015. DW4, in her answer to QA4 in her witness statement, stated that she had received the following documents from D2 in relation to the application:

(a) 12 salinan pelan pra hitungan ruj: MHS/GMS/0965 PH(01) ("Pelan");

(b) 3 salinan Borang 9B (Permohonan untuk memecahkan bahagian tanah) ("Borang 9B");

(c) Wang tunai sebanyak RM100.00 sebagai bayaran pendaftaran;

(d) 1 salinan sijil carian rasmi bagi hakmilik Hartanah Terdahulu;

(e) 1 salinan penyata cukai tanah 2010;

(f) 1 salinan hakmilik Hartanah Terdahulu;

(g) 8 salinan kad pengenalan pemilik-pemilik Hartanah Terdahulu; dan

(h) Surat kelulusan daripada Majlis Perbandaran Klang.

[140] D4's case is that it had acted in good faith and there was no reason for DW4 who was D4's officer who had processed the application for the partition, to suspect any suspicious circumstances in the application.

[141] For the reasons discussed below, this court is unable to agree with D4 that it had acted in good faith in discharging its duty under the NLC in processing and approving the application and that there were no suspicious circumstances in respect of the application.

(i) The Co-Proprietors' Identity Cards

[142] I found DW4 to be a less than candid witness – she was defensive and evasive. As is apparent from the notes of proceedings of the trial, under cross-examination by the plaintiffs' counsel, DW4 resolutely refused to answer whether she had examined the copies of the co-proprietors' identity cards submitted with the application.

[143] DW4's answers to the plaintiffs' counsels' questions on whether she had examined the copy of the deceased's identity card were either "mungkin" and "kurang pasti". Even when asked the simple question by the plaintiffs' counsel of whether she had examined the copies of the identity cards, she answered "kurang pasti". I then asked DW4, when she answered "kurang pasti" did she mean she was unsure whether she had checked the copies of the identity cards, she refused to answer my question but instead claimed that she was confused by the question! When plaintiffs' counsel rephrased the question to suggest that she did not examine the identity cards, DW4 disagreed with the suggestion. This can be seen in the excerpt below of DW4's answers during cross-examination:

Plaintiffs' Counsel:	Puan tak semak kad pengenalan tersebut yang tadi Puan kata dokumen yang wajib untuk dikemukakan?
DW4:	Kurang pasti.
Plaintiffs' Counsel:	Saya juga mencadangkan ...
Judge:	Maaf. Maknanya Puan kurang pasti sama ada Puan semak atau tidak? Adakah itu jawapan Puan?
DW4:	Saya keliru dengan soalan sebenarnya.
Judge:	Okay. Tolong tanya semula.

Plaintiffs' Counsel:	Baik. Yang Arif. Puan kata dekat situ [answer to QA5 in DW4's witness statement] "Saya tidak mengesyaki sebarang perkara yang mencurigakan" dan Puan kata kerana Puan kata pemilik hartanah terdahulu pada pelan dan Borang 9B adalah sama? Betul?
DW4:	Betul.
Plaintiffs' Counsel:	Maksudnya, setuju dengan saya bila Puan tulis jawapan begini Puan tidak semak pun kad pengenalan tadi yang saya soal di awal tadi? Setuju?
DW4:	Tidak sebab ... tidak.

[144] Despite resolutely refusing to answer plaintiffs' counsel's questions during cross-examination as to whether she had examined the copies of P1's, the deceased's and the other co-owners' identity cards, D4 during re-examination by the ALA said that she had examined the copies of identity cards.

[145] Nonetheless, what is evident from D4's answer to the ALA during re-examination is that all she did was compare that the details (butiran) on the copies of identity cards were the same as that on the impugned plan, the Borang 9B and the issue document of title of the original land. DW4 told this court that to her, in an application for partition of land, what is important is the signature of the owners – in that the signature of the landowners were on the Borang 9B and the impugned plan submitted by D2. The excerpt of DW4's testimony is reproduced below:

D4's Counsel:	Tadi peguam ada cadangkan bahawa dalam permohonan pecah bahagian ini Puan hanya merujuk kepada ... hanya menyemak kepada pelan dan Borang 9B sahaja tetapi tidak menyemak kad pengenalan tadi Puan jawab tidak setuju. Boleh jelaskan kenapa tak setuju?
DW4:	Kerana kita telah ... saya telah menyemak salinan-salinan kad pengenalan tersebut. *Cuma yang kita telah pastikan pada salinan tersebut adalah butirannya sama dengan nama yang ternyata dalam permohonan. Maksudnya yang sama di atas Borang 9B dan juga butiran tersebut adalah sama di atas pelan yang telah ditandatangani dan butiran-butiran pemilik tanah tersebut juga adalah sama seperti yang dinyatakan dalam geran tanah asal.*

D4's Counsel:	Peguam juga ada cadangkan oleh kerana Puan tidak menyoal tentang kad pengenalan Nabiba tersebut yang berbeza dengan kad pengenalan pemilik tanah yang lain Puan tidak menjalankan tugas administrative dengan betul. Puan jawab tidak bersetuju. Boleh jelaskan kenapa tak setuju?
DW4:	Saya tidak setuju kerana *untuk permohonan pecah bahagian tanah apa yang penting ... yang penting mesti ada adalah tandatangan pemohon, tandatangan pemilik tanah di mana tandatangan pemilik tanah telah pun ada pada Borang 9B dan juga pada pelan tanah tersebut yang telah dikemukakan oleh MHS Consultant kepada kita*. (emphasis added)

[146] In my view, if indeed DW4 had checked the details on the copies of the identity cards as she told the ALA during re-examination, she would have noticed the following:

(i) on the impugned plan (exh. "P1"), the deceased's identity card number was not stated. The "No. KP" under the deceased's name was left blank. The identity card numbers for Saada binti Jarkasi and Zohdi bin Haji Abdul Manan were left blank too; and

(ii) on the Borang 9B (exh. "D3"), the identity card numbers for the deceased, Saada binti Jarkasi and Zohdi bin Haji Abdul Manan were also left blank.

[147] D4 would also have noticed that copy of the deceased's identity card (unlike the copies of P1's and the other co-owners' identity cards) was the old identity card. It was not the new identity card (the MyKad), and it did not contain all the particulars made compulsory by NR Regulations 1990 with effect from 1 November 2000.

[148] Learned ALA argued that the deceased's identity card was still valid and could be used in the application to partition the original land based on reg. 2 of the NR Regulations 1990. With respect to the ALA, I am unable to agree with her that the deceased's identity card was still valid when the application was made in 2010. In making that argument, learned ALA had ignored the amendments to the NR Regulations 1990 as amended by the National Registration (Amendment) Regulations 2000 (PU(A) 70/2000)(the "NR (Amendment) Regulations 2000") and National Registration (Amendment) Regulations 2001 (PU(A) 232/2001)(the "NR (Amendment) Regulations 2001").

[149] "Identity card" is defined in reg. 2 of the NR Regulations 1990 as follows:

> "identity card" means an identity card or a Government multipurpose card issued under subregulation 5(1), any temporary identity document issued under subregulation 5(5) and paragraph 7(3)(b), and includes any replacement identity card issued under regulation 13, 14, 15 or 18, as the case may be, and any identity card issued before the operation of these Regulations;

[150] Regulation 5(2) of the NR Regulations 1990, as amended by NR (Amendment) Regulations 2000 and the NR (Amendment) Regulations 2001 reads:

> (2) An identity card **shall contain** the particulars as prescribed in the First Schedule or Schedule 1A, as the case may be, and such other particulars as may be necessary for the identification of the person to whom it is issued.
>
> (emphasis added)

[151] The particulars that must be contained in an identity card are set out in the First Schedule of the NR Regulations 1990 as below:

> First Schedule
>
> (Regulation 5(2))
>
> FORM OF IDENTITY CARD
>
> An identity card shall contain the following particulars:
>
> Obverse:
>
> Identity Card Number
>
> Name
>
> Residential Address
>
> Date of Issuance of Identity Card/Expiry Date for Replacement Identity Card
>
> Old Identity Card Number, if any
>
> Identity Code for Native of the State of Sabah or Sarawak
>
> Citizenship or Residential Status
>
> Religion (only for Muslims)
>
> Holder's Photograph
>
> Reverse:
>
> Signature of Director General of National Registration
>
> Left Thumb Impression
>
> Right Thumb Impression
>
> Holder's former name, if any, shall be as registered in the Birth Certificate issued under the law relating to the registration of births and deaths or in an Adoption Certificate issued to a child or a person so adopted under the law relating to the registration of adoption or in the Citizenship

> Certificate issued under Part III of the Federal Constitution, but the manner in which the name is to be printed on the identity card shall be as determined by the Director General.

[152] The amendments to the First Schedule of the NR Regulations 1990 by the NR (Amendment) Regulations 2000 came into effect on 1 October 1999 and by NR (Amendment) Regulations 2001 came into effect on 1 November 2000. The deceased died in 2003 *ie*, after the amendments to the First Schedule of the NR Regulations 1990 came into effect. Accordingly, the deceased's identity card must contain the particulars set out in the First Schedule of the NR Regulations 1990, listed in para. [151] above. Below is an image of the copy of the deceased identity card that was submitted to D4 by D2 in March 2010:

[153] Regulation 5(2) of the NR Regulations 1990 states that an identity card "shall contain the particulars as prescribed in the First Schedule or Schedule 1A, as the case may be ...". And the First Schedule states "An identity card shall contain the following particulars: ...".

[154] It is a trite law that the word "shall" means "must" and is mandatory. In *Dato' Dr Zambry Abd Kadir v. Dato' Seri Ir Hj Mohammad Nizar Jamaluddin; Attorney General Of Malaysia (Intervener)* [2009] 5 CLJ 265; [2009] 5 MLJ 464; [2009] 4 AMR 569, Raus Sharif JCA (as he then was) held:

> [44] The word 'shall' in art XVI (6) of the Perak State Constitution must be interpreted as being 'mandatory'. Any other meaning would create an absurdity to parliamentary democracy ...

[155] In *Junaidi Berimang v. PP & Another Appeal* [2022] 1 LNS 522; [2022] MLJU 453, the Court of Appeal, per Lee Swee Seng JCA held:

> [17] Parliament is familiar with the use of the word "shall" to make a matter, factor, condition or circumstance to be considered a mandatory one and indeed in some cases, to avoid any doubts and to remove all traces of it, it has not hesitated to use the word "must".

> [18] ... The word "must" entertains no room for discretion and must be mandatorily followed and complied with; it is the language of strict demand. It is at the extreme end of a continuum of degree of obligation signifying no room for discretion.

[156] Zabariah Yusof FCJ in delivering the Federal Court's judgment in *Benjamin William Hawkes v. PP* [2020] 8 CLJ 267; [2020] 5 MLJ 417; [2020] 6 AMR 749, quoting from *Cheong Seok Leng v. PP* [1988] 1 LNS 39; [1988] 2 MLJ 481 (ACRJ Singapore) said:

> [46] Chan Sek Keong JC (as he then was) explained the relevant rules of interpretation to be given to the word 'shall' which appears in legislations as follows: ... The relevant rules of interpretation may be briefly stated thus: when a statute uses the word 'shall', *prima facie* it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute.

[157] Looking at the whole of the NR Regulations 1990 and the word "shall" in reg. 5(2) and the First Schedule of the NR Regulations 1990, the real intention of the Legislature is that the requirement that Malaysian identity cards contain the particulars prescribed in the First Schedule of the NR Regulations 1990 is mandatory.

[158] Therefore, after 1 November 2000, Malaysian identity cards must contain all the particulars prescribed in the First Schedule of NR Regulations 1990. In this instant case, it is plainly obvious that all the copies of the identity cards of the co-proprietors of the original land, except for the deceased's, contained all the particulars stipulated in the First Schedule of the NR Regulations.

[159] Based on the provisions in reg. 5(2) and the First Schedule of the NR Regulations 1990, with respect to learned ALA, I am unable to agree with her argument that the deceased's identity card was valid and can be accepted for purposes of the application for the subdivision and the partition of land.

[160] Against the very clear provisions of the NR Regulations 1990 that from 1 November 2000, all Malaysian identity cards must contain the particulars prescribed in the First Schedule of NR Regulations 1990, I am curious why learned ALA had invited this court to make a finding of adverse inference against the plaintiffs under s. 114(g) of the Evidence Act 1950 for not calling a witness from the Jabatan Pendaftaran Negara (JPN) to testify that the old version of the identity card is no longer valid.

[161] With respect to learned ALA, it is not necessary for the plaintiffs to call a witness from JPN to testify as to what are the statutory requirements of a Malaysian identity card because just by reading the provisions of NR Regulations 1990 as amended by the NR (Amendment) Regulations 2000 and the NR (Amendment) Regulations 2001, one can ascertain that the copy of

the deceased's identity card submitted with D2's application in 2010 was no longer a valid identity card under the law as it did not contain the particulars stipulated in the First Schedule of the NR Regulations 1990.

[162] It is patently clear from the image in para. [152] above that the copy of the deceased's identity card submitted to D4 does not contain the details stipulated in the First Schedule of the NR Regulations 1990. Additionally, the number of the deceased's identity card is described in the First Schedule of the NR Regulations 1990 as "old identity card number".

[163] As discussed above, DW4, under cross-examination, had resolutely refused to answer whether she had checked the copies of the co-proprietors' identity cards submitted with the application. It was only during re-examination when asked by the ALA whether she checked the copies of the identity cards, she said that she did. She told the ALA that she had compared that the details (butiran) on the copies of identity cards were the same as those on the impugned plan.

[164] However, if what DW4 said was true, she would have noticed that the identity card numbers of the deceased, Saada binti Jarkasi and Zohdi bin Haji Abdul Manan were not on the impugned plan and the Borang 9B. To my mind, even if DW4 had cursorily glanced at the copies of the identity cards, she could see the copy of the deceased's identity card was the old identity card and is different from that of the other co-proprietors. And if she had indeed checked the details of the identity cards against the details of the identity cards on the impugned plan as she claimed, she would have noticed that the details (butiran) were not the same since the identity card numbers of the deceased, Saada binti Jarkasi and Zohdi bin Haji Abdul Manan were left blank on the impugned plan.

[165] These discrepancies would have triggered DW4 to question or ask for a copy of the deceased's new identity card *ie*, her identity card with the particulars required under the NR Regulations 1990, and she would have also asked why the identity card numbers for the deceased, Saada binti Jarkasi and Zohdi bin Haji Abdul Manan were not written on the impugned plan.

[166] If DW4 had asked these questions to D2 before forwarding the application to the District Officer/District Land Administrator Klang for approval, DW4 would have found out that the deceased had passed away in 2003, and it would have been impossible for her to have signed the impugned plan and the Borang 9B in 2010.

(ii) The Co-Proprietors Signatures

[167] Another glaring discrepancy that should have triggered DW4's suspicion if she had, in good faith, examined the application for the partition, were the co-proprietors' purported "signatures" on the impugned plan and the Borang 9B.

[168] DW4 testified that D4's procedure in processing an application for the partition of land is to check that the names of the co-proprietors on the title of the land are the same as the names of the co-proprietors on both the pre-computation plan and the Borang 9B. In doing so, did she close her eyes to the glaring and obvious differences between the "signatures" on the impugned plan and the Borang 9B?

Image of Co-Proprietors' "Signatures" on the Impugned Plan

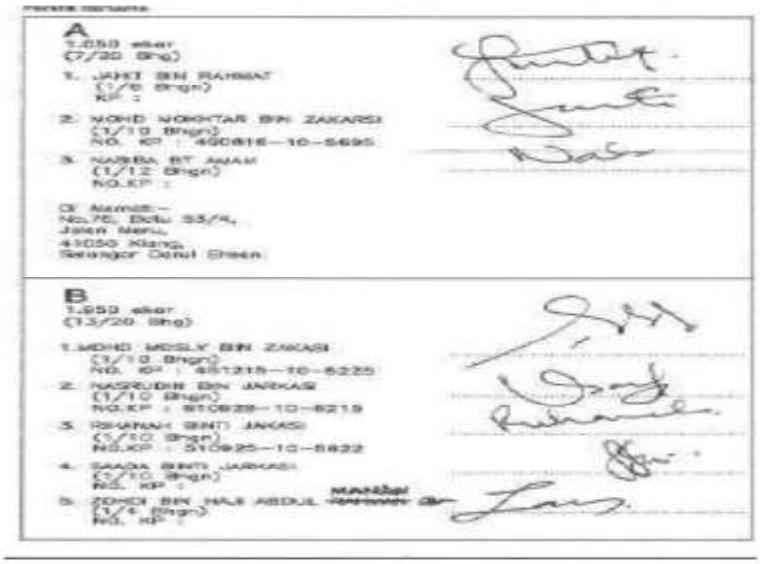
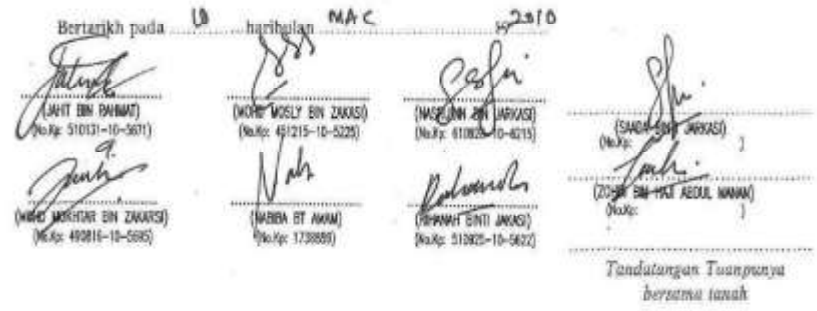


Image of Co-Proprietors' "Signatures" on the Borang 9B



[169] As can be seen from the images of the impugned plan and the Borang 9B reproduced above, even to the naked eye, none of the "signatures" of the co-proprietors on the impugned plan are the same as their "signatures" on the Borang 9B. The forger did not even try to make the "signatures" on the impugned plan and the Borang 9B look the same!

[170] Learned ALA had submitted that as the original issue document of title for the original land had been delivered to D4 in the application for the subdivision and partition of the land, D4 had no reason to suspect any suspicious circumstances in the application and had proceeded to process and approve the application. To support D4's case, the ALA cited the case of *Supreme Tribute Sdn Bhd v. Dato' Mohd Amin Ahmad Yahya & Ors* [2018] 1 LNS 1006; [2018] AMEJ 0826; [2018] MLJU 984 ("*Supreme Tribute*"), where the Court of Appeal held that the appellant in that case could not blame the fifth to eighth defendants (the Land Administrator Hulu Langat, the Selangor State Government, the Assistant District Office Hulu Langat, and the Director of Land and Mines Selangor) for the fraudulent transfer of land as it was a result of the appellant's own solicitor's act of using forged documents that led to the transfer of the land and that it was the appellant who had stood to gain from the whole fraudulent exercise. She also cited *Leelawathy Ratnam & Ors v. Pengarah Tanah Dan Galian Negeri Selangor & Anor* [2010] 1 LNS 1185; [2010] AMEJ 0351, where the High Court held:

> In the absence of suspicion that documents were forged, both Defendants were under no duty to inquire into the veracity of the documents presented to them particularly when the application was accompanied by the required documents.

[171] I find that the facts in this case can be distinguished from those in *Supreme Tribute*. In this instant case, the forged documents were used by D2, whose fees were paid by D1, to make the application for the partition. D1 said that he had also paid the requisite fees to D3 and D4 for the application to partition the original land. D1 had benefited from the whole fraudulent exercise.

[172] As regards the case of *Leelawathy Ratnam*, the High Court held in the absence of suspicion that the documents were forged, the defendants in that case (the Director of Land and Mines Selangor and the Land Administrator Daerah Petaling) did not have the duty to inquire into the veracity of the documents presented to them. The decision in *Leelawathy Ratnam* can be distinguished from the facts of this instant case, where from the images of the co-proprietors' "signatures" on the impugned plan and the Borang 9B reproduced in para. [146] above, it is obvious that there are suspicious circumstances since the purported "signatures" of the co-proprietors on the impugned plan and the Borang 9B are glaringly different.

[173] In its statement of defence, D4 pleaded that it did not suspect any suspicious circumstances as regards the documents presented including the impugned plan and the Borang 9B, and in good faith accepted that all the signatures on the impugned plan and the Borang 9B was the signatures of the co-proprietors of the original land. I find it astonishing that the glaring and obvious difference between the co-proprietors' "signatures" on the impugned plan and the Borang 9B did not raise any red flags or suspicions with DW4 or D4 who had approved the application.

[174] Learned ALA had further submitted based on the Court of Appeal's decision in *Pendaftar Hakmilik, Pejabat Tanah Dan Galian Negeri Selangor v. Bank Pertanian Malaysia Bhd* [2016] 3 CLJ 851 ("*Bank Pertanian Malaysia*") that D4 does not have the responsibility to investigate behind the Borang 9B and to ensure that the parties named in the Borang 9B were the correct parties.

[175] But what about a duty to investigate the face of the Borang 9B itself? In view of (i) the obvious and glaring differences between the co-proprietors' "signatures" on the Borang 9B and their "signatures" on the impugned plan, and (ii) the absence of the identity card numbers for the deceased, Saada binti Jarkasi and Zohdi bin Haji Abdul Manan on the Borang 9B, does D4 not have the responsibility to question whether the signatures on the Borang 9B were indeed that of the co-proprietors of the land and why were the identity card numbers of the three co-proprietors not written on the Borang 9B?

[176] In my considered view, the answer is in the affirmative. D4, as the body entrusted under the NLC to process and approve the application of the partition in good faith, does have the responsibility, at the very least, to ask the person who had submitted the application – in this case, D2 – to explain why there is such an obvious discrepancy between the co-proprietors' signatures on the impugned plan and the Borang 9B and for D2 to confirm that the signatures on the said documents were indeed that of the co-proprietors of land and they had consented to the partition of the land. She should have also asked him about the missing identity card numbers on the Borang 9B, before submitting the application to D4 for approval.

[177] Another example of D4's lack of good faith and lackadaisical attitude is its action in giving the issue documents of title for the first partitioned portion and the second partitioned portion to the representative of the law firm Salva & Co, even though the law firm in their letter dated 8 December 2010 to D4 (marked exh. "P8") did not inform D4 who it was acting for or that it was acting for the proprietors of the lands (see DW4's answer in QA7 of her witness statement). All the law firm stated in the letter was that it allowed their representative, Mohd Januruddin bin Talib, to collect the issue documents of title.

Do The Plaintiffs Have The Responsibility To Inform D4 That The Deceased Has Died?

[178] Learned ALA, in defence of D4, submitted that the plaintiffs, in particular P1, had the responsibility to inform D4 that the deceased had passed away based on the provisions in ss. 346, 378 and 379 of the NLC. Sections 346(1), 378 and 379 of the NLC are reproduced below:

> Section 346: Registration of personal representatives
>
> (1) The personal representative or representatives of any deceased person may apply to the Registrar under this section to be registered as such in respect of any land, or share or interest in land, forming part of that person's estate; and the Registrar, if satisfied that any estate duty due in respect of the estate has been paid, or a postponement of payment allowed in respect of the land, share or interest in question, shall give effect to the application in accordance with the provisions of sub-ss. (3) and (4).
>
> ...
>
> Section 378: Changes of name by proprietors, *etc*
>
> (1) Subject to sub-s. (2), the Registrar may, upon the production to him of evidence (whether in the form of a deed poll, official certificate, statutory declaration or otherwise) from which he is satisfied of a change of name on the part of any person or body in whom any alienated land or interest is for the time being vested, or at whose instance a caveat has been entered in respect of any land or interest, make a memorial of the change in the relevant register document of title and in any issue document of title or other instrument relating to the said land or interest.
>
> (2) In the case of a natural person, such change may also refer to the description of his citizenship or the number of identity card issued to him under the National Registration Act 1959 [Act 78] or, where no such identity card has been issued to him, the number appearing in his passport or any other official document of identity.
>
> ...
>
> Section 379: Change of address by proprietors, *etc*
>
> (1) Any person or body in whom any alienated land or interest is for the time being vested, or at whose instance a caveat has been entered in respect of any land or interest, shall within the prescribed time notify the Registrar in Form 26A of a change of his address, and the Registrar shall make an appropriate record thereof.
>
> (2) Where the new address notified under sub-s. (1) is an address outside the Federation, the notification shall specify also an address within the Federation, for the service on the person or body in question of notices under this Act.

(3) Any address for the service of notices supplied to the Registrar pursuant to sub-s. (2) or any other provision of this Act may, by notification to the Registrar, be changed at any time to another address within the Federation, and the Registrar shall make an appropriate record of the change.

[179] With respect to learned ALA, I cannot see how any of the provisions in 346, 378 and 379 of the NLC can be interpreted to mean that the plaintiffs, in particular P1, have the responsibility to inform D4 that the deceased had passed away. Section 346(1) of the NLC states, "the personal representative or representatives of any deceased person may apply to the Registrar under this section to be registered as such in respect of any land, or share or interest in land, forming part of that person's estate."

[180] The Court of Appeal in *Junaidi Berimang v. Public Prosecutor And Another Appeal* (*supra*) held that the word "may" conveys "consideration" or "discretion". The Federal Court in *The Government Of Malaysia & Anor v. Aminah Ahmad* [2023] 8 CLJ 1; [2023] 5 MLJ 32; [2023] 6 AMR 102 agreed with the Court of Appeal that the word "may" is merely permissive and does not impose any obligation to act. Zabidin Mohd Diah CJ (Malaya) in delivering the judgment of the Federal Court held:

[41] Now the issue before us as well as before the courts below is, does the amended s. 3(2) of the PAA 1980 ensure that the constitutional guarantee in art. 147 of the Federal Constitution is preserved? The COA did not think so. The COA expressed its reasons as follows:

...

[30] It is plainly obvious that the term "may", in s. 3(2) of the PAA 1980 as amended, imposes no obligation to act. *"May" is merely permissive* (see *Datuk Raja Ahmad Zainuddin bin Raja Omar v. Perbadanan Kemajuan Iktisad Negeri Kelantan* [2016] 6 MLJevi 66 at para 14). *In context, it simply cannot be read as "shall" and there is also no submission by the respondents to this effect. It is evident that the word "may" is here used in contradistinction to the word "shall"*. This is not a case that admits of more than one possible interpretation. Thus, what would have been an adjustment that would have occurred as of right under the PAA 1980 before its amendment, is, by reason of the 2013 Amendment Act, reduced to something that may be acted upon in the manner provided by the amendments.

[42] After careful reading of the amended sections, we with respect, are in agreement with the COA that with *the word "may", being used as the mechanism built into s. 3(2) to address a less favourable situation, should it arise, is merely permissive*. The amended s. 3(2) of the PAA 1980 does not ensure that art. 147 of the Federal Constitution is not contravened.

(emphasis added)

[181] For this reason and based on the decisions of the Federal Court and the Court of Appeal, I am unable to agree with the ALA's submission that the plaintiffs, in particular P1, had the responsibility to inform D4 that the deceased had died. To agree with her would result in an absurdity in the interpretation of the provisions of the NLC and the normal and ordinary meaning of the word "may". It would go against the interpretation of the word "may" by the Federal Court and the Court Appeal, which pursuant to the doctrine of *stare decisis*, this court is bound.

Can D4 Rely On The Protection Of Section 22 Of The NLC?

[182] The ALA argued that D4 could rely on the protection provided under s. 22 of the NLC. Section 22 reads:

> **22. Protection of Officers**
>
> No officer appointed under this Part shall be liable to be sued in any civil court for any act or matter done, or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on him by or under this Act.

[183] The appellate courts have time and again held that the protection of officers under s. 22 of the NLC is not absolute. The Court of Appeal in *Bank Pertanian Malaysia* (*supra*) held that the Director of Land Mines Selangor and the Land Administrator cannot avail themselves to s. 22 of the NLC as there has been a glaring absence of good faith by reason of its failure to keep accurate particulars in the land registry. The High Court in *Hartalega Sdn Bhd & Anor v. Kerajaan Negeri Selangor & Ors* [2022] 7 CLJ 735; [2022] 12 MLJ 513; [2022] AMEJ 0681 listed some of the cases where the Court of Appeal had held that officers cannot avail themselves to the protection under s. 22 of the NLC:

> [40] Notwithstanding s. 22 of NLC, there are decided cases of the appellate courts which held that the land office, Land Administrator and the Registrar of Titles have statutory duties and owe certain duty of care to landowners in some exceptional situations. This means that the protection of officers under s. 22 of NLC is not comprehensive or absolute even in situation where the officers have acted in good faith.
>
> [41] From the decided authorities, it has been held that the land office owes a duty of care to landowners which includes taking reasonable steps to adequately protect the land owner's rights. This principle was decided by appellate courts in cases including:
>
> (i) Court of Appeal in *Pendaftar Hakmilik Negeri Selangor & Ors v. Shaifulizam Mohd Saleh & Anor And Another Appeal* [2020] 5 CLJ 595; [2020] MLJU 276 in which the Court of Appeal confirmed the negligence on the part of the land office as follows:

A

> [38] Such acts and omissions on the part of the Land Office amount to improper conduct and these improper conducts of the Land Office reflect bad faith on their part which, in our view, clearly show negligence on their part. Further, the non-compliance of the NLC shows a breach of their statutory duty which is equally a breach of a common law duty of care. The Land Office has failed in our view to properly keep land title details and land titles secure in the manner required by the NLC. In *Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v. Poh Yang Hong* [2016] 9 CLJ 297, the Federal Court had *inter alia* held that the administrative shortcoming on the part of the Land Administrator or Registry amounts to negligence.

B

C

(ii) *Pendaftar Hakmilik Negeri Selangor v. Caesius Development Sdn Bhd & Ors And Another Appeal* [2020] 3 CLJ 327 where the Court of Appeal stated the land office's duty of care as follows:

D

> [39] As a keeper of all land titles, for a particular State (in this case Selangor) it is reasonable to impose upon the land office, including the seventh defendant, a duty of care towards all land owners, to ensure that the landowners' interests are well protected and safeguarded. The land office, including the 7th defendant, has to ensure that the law and proceedings are followed strictly, failing which it can cause the landowners losing their lands.

E

(iii) In *Pendaftar Hakmilik Negeri Selangor & Ors v. Shaifulizam Mohd Saleh & Anor And Another Appeal* [2020] 5 CLJ 595 [2020] 5 CLJ 595; [2020] MLJU 276; the Court of Appeal held that the Land Administrator has a specific statutory duty to serve Form 5F (notice to collect the issue document of title) upon the landowner. The Court of Appeal held that failure on the part of the Land Administrator to serve the statutory notice was a breach of statutory duty which rendered him liable to the landowner. (see paras. [31] to [36] of the judgment).

F

G

[184] I find that based on the facts narrated above, D4 had not acted in good faith in the manner in which it had processed the application for the subdivision and the partition of the original land and its action of partitioning the original land in breach of the provisions of the NLC. I find that DW4 had failed to exercise due diligence and care in the manner she carried out her responsibility in processing the application for the partition of the

H

original land, which has resulted in the plaintiffs and their extended families being in danger of having their houses of the said land demolished and them being evicted from the said land – land on which they and their families have lived for nearly 60 years since 1965.

I

[185] Accordingly, I find that D4 cannot avail itself of the protection accorded under s. 22 of the NLC.

Findings On Issue (viii)

[186] For the reasons discussed above, I find that D4 had breached the NLC and was negligent in discharging its responsibility and duty of care to the plaintiffs in approving the application for the partition of the original land.

Damages

[187] The plaintiffs plead that they had suffered loss and damage as a result of the partition of the original land by D4, whereby P1's and the deceased's ownership of the original land were moved to the first partitioned portion, which is situated at the back of the second partitioned portion, away from the main road. They are also in danger of having their family homes and those of their extended families located on the second partitioned portion demolished by D1 and/or D3. As shown in the minutes of the meeting on 2 March 2019 between the plaintiffs together with some of their family members and D1 (reproduced in para. [24] above), D1 had suggested that they move to the first partitioned portion or he buys P1's and the deceased's share in the first partitioned portion or replace it with one of his other lands – which suggestions the plaintiffs and their families refused.

[188] D4's partition of the original land into the first partitioned portion and the second partitioned portion is null and void under the NLC since D2 was not appointed by P1, the deceased or any of the other co-owners to make the application and because it was made based on forged documents.

[189] As the facts show, the partition of the original land was made without P1's and the deceased's knowledge or approval. Additionally, D1 and D2 could not prove that any of the other co-owners had appointed D2 to make the application on his/her behalf. The facts also show that the purported "pre-completion plan" that D2 had submitted to D3 and D4 was not in fact a pre-completion plan. And the signatures of P1 and the deceased on the said plan and the Borang 9B were forged. Because the impugned plan and the Borang 9B are forged, both these documents are null and void.

[190] P1 and the deceased's estate were unlawfully deprived of their property by reason of the unlawful partition of the original land. The harm they suffered is not quantifiable.

[191] In *Laksmana Realty Sdn Bhd v. Goh Eng Hwa* [2005] 4 CLJ 871; [2006] 1 MLJ 675, Gopal Sri Ram JCA (as he then was) said "General damages are awarded for harm that is not quantifiable".

[192] The Court of Appeal in *Sambaga Valli KR Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal* [2017] 1 LNS 500; [2018] 1 MLJ 784; [2018] 4 AMR 745 held:

> [14] It is trite that a person injured by another's wrong is entitled to general damages for non-pecuniary such as his pain and suffering, hardship, discomfort, mental distress and loss of amenities of life. There

A is no standard rule to measure the damage in such cases. The courts usually determine the amount based on a fair and reasonable standards, free from sentimental or fanciful standards, and based upon evidence adduced

[193] Having considered the plaintiffs' pain and suffering, hardship and B mental distress caused by the loss of their property (the original land) and the danger of having their houses located on second partitioned portion demolished because of D1, D2 and D4's actions, I find that the sum of RM200,000 a fair and reasonable sum of general damages, in the circumstances, payable to the plaintiffs by D1, D2 and D4 jointly and C severally.

Exemplary Damages

[194] The plaintiffs had also prayed for exemplary damages.

[195] In *Rookes v. Barnard (No 1)* [1964] AC 1129, the House of Lords held D that exemplary damages may be awarded in three categories, namely:

(i) where the plaintiff is injured by the oppressive, arbitrary or unconstitutional action by the executive or the servant of the Government;

(ii) the defendant's conduct has been calculated by him to make a profit E for himself which may well exceed the compensation payable to the plaintiff; or

(iii) where a statute has expressly authorised the award of exemplary damages.

[196] The principle in *Rookes v. Barnard (No 1)* has been accepted and applied F by our courts. In *Tenaga Nasional Bhd v. Evergrowth Aquaculture Sdn Bhd & Other Appeals* [2021] 9 CLJ 179; [2021] 5 MLJ 937; [2021] 7 AMR 857, the Federal Court held:

As laid down in *Rookes* (*supra*), exemplary damages is to be awarded in G three categories of cases, *to wit*, when it is statutorily provided for, when the loss is occasioned by the oppressive, arbitrary or unconstitutional conduct of government servants and when the defendant's conduct was profit-orientated.

[197] The Court of Appeal in *Sambaga Valli KR Ponnusamy v. Datuk Bandar* H *Kuala Lumpur & Ors And Another Appeal* (*supra*) held:

[33] The exemplary damages or punitive damages – the two terms now regarded as interchangeable – are additional damages awarded with reference to the conduct of the defendant, to signify disapproval, condemnation or denunciation of the defendant's tortious act, and to punish the defendant. *Exemplary damages may be awarded where the defendant* I *has acted with vindictiveness or malice, or where he has acted with a "contumelious disregard" for the right to the plaintiff. The primary purpose of an award of exemplary damages may be deterrent, or punitive and retributory, and the award*

may also have an important function in vindicating the rights of the plaintiff. (See *Rookes v. Barnard* [1964] 1 All E R 347; *A B v. Southwest Water Services* [1993] All E R 609; *Broome v. Cassell & Co* [1971] 2 Q B 354, *Laksamana Realty Sdn. Bhd. v. Goh Eng Hwa and Another Appeal* [2005] 4 CLJ 871; [2006] 1 MLJ 675).

(emphasis added)

[198] I find D4's approach in processing and approving the application for the partition of the original land to be lackadaisical and arbitrary. As discussed above, the evidence shows that notwithstanding the obvious and glaring differences between the purported "signatures" of the co-proprietors of the original land on the impugned plan and the Borang 9B submitted to D4, and the fact that the copy of the deceased's identity card was the old identity card, which did not contain all the information which are mandatory under the NR Regulations 1990, D4 did not take any action to question the discrepancies in the "signatures" and the deceased's identity card before approving the application.

[199] It is not evident whether D4, as the authority entrusted under the NLC to approve applications for the partition of land in the district of Klang, has standard operating procedures ("SOPs") for processing applications for the partition of land since none was produced in court during the trial.

[200] The Court of Appeal in *Pendaftar Hakmilik Negeri Selangor v. Caesius Development Sdn Bhd & Ors And Another Appeal* [2020] 3 CLJ 327; [2020] MLJU 25 ("*Caesius Development*") held there is a need for a flowchart at the Pendaftar Hakmilik Negeri Selangor ("PHNS") as an administrative guide to work process. It also held that PHNS' officers "are not robots and therefore they need to apply their minds and attention in processing every application". Zaleha Yusof JCA (as she then was) held:

> [38] With due respect to the learned ALA, we find the argument put forward is a hollow one and does not hold water. We cannot expect the Legislature to specifically list down all the documents required under s. 378 as every application is distinct, hence its requirement differs. *Hence the need for an office flowchart as an administrative guide to the work process. It did exist in the seventh defendant's office but the learned High Court Judge found it had not been adhered to by PW4. Officers of the seventh defendant are not robots and therefore they need to apply their minds and attention in processing every such application*, which the learned High Court Judge found they had failed to do so.
>
> [39] As a keeper of all land titles, for a particular State (in this case Selangor) it is reasonable to impose upon the land office, including the seventh defendant, a duty of care towards all landowners, to ensure that the landowners' interests are well protected and safeguarded. *The land office, including the seventh defendant, has to ensure that the law and proceedings are followed strictly, failing which it can cause the landowners losing their lands*.
>
> (emphasis added)

[201] Even if D4 does have SOPs, from the facts of this case and DW4's testimony, there does not appear to be any process or procedures in D4's SOPs to ensure that the signatures of the pre-computation plan and the Borang 9B are indeed that of the co-proprietors of the land before it proceeds to approve an application for the partition of land.

[202] Furthermore, based on the manner DW4 had processed the application and D4's approval of the application, it appears that D4 also does not have a process in place that requires its officers – in situations where the owners' signatures on the pre-computation plan and the Borang 9B obviously differ – to seek further clarification or to question the veracity of those signatures before approving an application for partition of land. As held by the Court of Appeal in *Caesius Development*, DW4 should have applied her mind and attention in processing the application for the partition of the original land.

[203] D4 also does not appear to have a process to ensure that the identity card numbers of all the co-proprietors of land are stated on the pre-computation plan and the Borang 9B submitted in an application for a partition of land. It also does not have a process in place that requires copies of identity cards submitted after 1 November 2000 to have all the information statutorily required by the NR Regulations 1990.

[204] From DW4's testimony, it can be concluded that D4's procedure is that as long as the names of the co-proprietors on the pre-computation plan and the Borang 9B, are the same as the names of the co-proprietors on the title of the land, and there is some form of scribble by the names of the co-proprietors, D4's officer who is processing the application will take it that those scribbles are the "signatures" of the co-proprietors – even though the scribbles on the plan and the Borang 9B are obviously different to anyone looking at the scribbles – just as DW4 did in this instant case. Also, as this instant case shows, it matters not to D4 that some of the identity card numbers of the co-proprietors of land are not written under their names on the pre-computation plan and the Borang 9B in an application for the partition of the land. Notwithstanding the missing identity card numbers, D4 would still approve the application.

[205] D4, as the District Land Administrator of Klang, is empowered to approve an application for the partition of land under s. 141 of the NLC only where each of the co-proprietors has either joined in or consented to making of the application for the partition. However, D4 does not have any process or procedure in place to verify that an application for the partition of land by a licensed land surveyor was made on the instructions of a co-proprietor of land (under s. 141A of the NLC) or with the consent of all the co-proprietors of the land. This is evident from the testimony of the defendant's fifth witness, Ahmad Fitri bin Ahmad ("DW5"), the officer currently in charge of processing applications for partition of land at D4.

[206] Although DW5 was not the person who had examined and processed the application for the partition of the original land in 2010, his testimony is relevant as regards D4's procedure in respect of processing applications for the partition of land. DW5 informed the court that in an application for the partition of land, D4 does not require to see an appointment letter from the co-proprietors of the land or any of the co-proprietors of the land confirming that they had appointed the licensed land surveyor to make the application for partition on their behalf. This is even though s. 141(1)(a) of the NLC expressly states that:

> No partition shall be approved by the State Director or, as the case may be, Land Administrator unless each of the co-proprietors has either joined in, or consented to the making of, the application for its approval.

[207] In addition to the above, other instances of D4's arbitrary approach and disregard of the rights of the co-proprietors of the original land in the application for the partition are:

(i) D4's approval letter for the partition, which was addressed to P1, was not posted or delivered to P1. Instead, it was given by D4 to D2; and

(ii) D4 delivered the issue documents of title for the partitioned lands to a representative of the law firm, Messrs Salva & Co, even though the law firm did not state in its letter to D4 who it was representing and why it had the right to the said issue documents of title.

[208] The Court of Appeal in *Caesius Development* (*supra*) had held that the land office must ensure that it strictly follows the law because its failure to do so could result in landowners losing their land. It also held that the Selangor Registrar of Title must have a flowchart as an administrative guide to its work process, and their officers "should apply their minds and attention" in processing every application.

[209] In this instant case, DW4's lackadaisical approach in the manner she had examined and processed the documents submitted for the application for the partition, coupled with D4's lack of SOPs in processing applications for the partition of land, had resulted in P1 and the deceased losing their co-ownership of the original land, their homes in danger of being demolished and their families evicted from the land.

[210] D4's lack of SOPs has enabled its officers processing the applications for the partition of land and the District Land Administrator approving the applications to take whatever arbitrary approach they choose without any regard to the provisions in the NLC and the rights of landowners. DW4's conduct and DW5's testimony show that there are no safeguards in D4's process and procedures to ensure that in all applications for the partition of land, the applications are made either by the co-proprietors of the land or by a licensed land surveyor who was appointed by the co-proprietors of the land.

[211] In this instant case, DW2 said that he had left D2's business card at the land office, and the Malay man, whose name he and D1 claim they cannot remember, had called him and instructed him on the phone to apply to partition the original land. It is frightening that based on this telephone call alone, D2 was able to set the wheels in motion for his fraudulent application for the partition of the original land based on the forged documents, and for the application to be approved by D4.

[212] What this case shows is that D4's lack of procedures, guidelines and safeguards has enabled brokers and/or persons who are not registered owners of a land, to engage unscrupulous licensed land surveyors to apply for the partition of land, without the knowledge or consent of the registered landowner. It also shows D4's contumelious disregard for the rights of landowners, its lack of good faith in carrying out its duties as the District Land Administrator of Klang, as well as its blatant disregard for its statutory duties and the trust accorded to it by Parliament in the NLC. D4 did not carry out its duties "in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on him" by or under the NLC. It follows, therefore, that D4 cannot hide behind the protection provided in s. 22 of the NLC.

[213] A person's right to property is a fundamental right protected by the Federal Constitution. Article 13(1) of the Federal Constitution states:

> (1) No person shall be deprived of property save in accordance with law.

[214] D4 is a servant of the Government. Its unlawful partition of the original land was unconstitutional as it was not in accordance with the provision of the NLC and had caused P1 and the deceased's estate to be deprived of their property.

[215] Accordingly, for all these reasons, I am of the view, based on the first limb of the criteria specified in *Rookes v. Barnard (No. 1)*, that exemplary damages should be awarded against D4, in the sum of RM1,000,000.

[216] This sum of RM1,000,000 is not intended to enrich the plaintiffs. Instead, it is to signify to D4 and its officers of this court's disapproval, condemnation, and denunciation of D4's unconstitutional action, their lackadaisical and arbitrary approach in processing the application for the partition of the original land, their contumelious disregard of the rights of P1 and the deceased as registered owners of the land, as well as their disregard of D4's statutory duties and the powers entrusted to it by Parliament under the NLC.

[217] Further, it is hoped by reason of the relatively large amount of exemplary damages awarded, D4 will be galvanised to take the necessary action to install the requisite SOPs and safeguards, and provide the necessary education and training to its officers to ensure that they carry out their statutory duties and obligations under the NLC in accordance with the law and in good faith.

Decision

[218] Accordingly, for all the reasons above, this court gives judgment to the plaintiffs and makes the following orders:

(i) a declaration that the partition of the original land into the first partitioned portion and the second partitioned portion is null and void;

(ii) an injunction restraining D1, D2 and D3 from demolishing the plaintiffs' houses and the houses of their extended families located on the second partitioned portion and built prior to the issuance of the title of the second partitioned portion;

(iii) an injunction restraining D1, D2 and D3 from evicting the plaintiffs and their families from the second partitioned portion;

(iv) D4 is ordered to cancel the title for the first partitioned portion and the second partitioned portion;

(v) D4 is ordered to issue a geran baharu hakmilik sambungan for the original land with the record of the ownership that is the same as Suratan Hakmilik No. GM 6048, Lot 2558, Mukim Kapar, 5th Mile, Sungai Binjai Road, Daerah Klang, Negeri Selangor;

(vi) D1, D2 and D4 are ordered to pay general damages to the plaintiffs in the sum of RM200,000;

(vii) D4 is ordered to pay exemplary damages to the plaintiffs in the sum of RM1,000,000;

(viii) interest at the rate of 5% per annum is payable on the general damages from the date of judgment until full settlement;

(ix) D1, D2 and D4 are ordered to pay costs of this action to the plaintiffs in the sum of RM50,000 subject to the allocatur fee.